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TRUCKING INDUSTRY DEREGULATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

ECONOMIC DEREGULATION OF THE TRUCKING INDUSTRY

SEPTEMBER 20 AND 27, 1985

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ECONOMIC DEREGULATION OF THE TRUCKING INDUSTRY

FRIDAY, SEPTEMBER 20, 1985

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:55 p.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood presiding.

Staff members assigned to these hearings: Karen Phillips, professional staff member; Steve Palmer, minority professional staff member; and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. I see Senator Gramm here. I want to start this hearing early if we might, because I had to postpone it from this morning because of markups in the Finance Committee on a reconciliation bill which we had to finish today. We were voting on the Senate floor and had nobody else to preside this afternoon, so I am going to do as much as I can as quickly as I can. I may have to take some occasional 10 to 15 minute recesses, and I may have to take longer recesses than that if the issue of financing the Superfund is debated on the floor, and it may be. We are on the Superfund. Whether we are going to debate that part of the Superfund or not, I do not know.

As everyone in this room knows or anyone that is connected with trucking knows, I have been a strong, strong advocate of deregulation and I think we should continue on down the road toward complete economic deregulation of the trucking industry.

And by economic I do not necessarily mean safety, I do not necessarily mean fitness, and there are problems involving insurance that are plaguing all truckers. There are problems involving cargo liability that we need to check into.

I have said many times I am willing, if those who in the past have been opposed to trucking deregulation are at all interested, in a compromise, in a rational phase-out over a decent period of time—deregulation. I would be willing to accept that.

Clearly, we are going to have to face many problems of preemption. We cannot phase out Federal regulation of the trucking industry and substitute for it State regulation of the trucking industry. And I am willing to go a long way toward preempting those forms of State regulation that simply interfere with interstate commerce as we have determined it to be necessary.

This afternoon we have a variety of witnesses, including the Honorable Phil Gramm, U.S. Senator from Texas, who is here on a very particular problem that does not involve per se regulation, but it involves a problem of Mexican trucks along the border working with industries on both sides of the border.

He was the first one to call it to my attention, and I have to confess, not being from a border State, I was unaware of the problem and I appreciate very much his calling it to my attention. And I would like to call upon him as our first witness this afternoon, the Honorable Phil Gramm from Texas.

STATEMENT OF HON. PHIL GRAMM, U.S. SENATOR FROM TEXAS

Senator **Gramm**. Mr. Chairman, let me begin by thanking you so much for holding this hearing.

We have a very severe problem that relates to the Motor Carrier Safety Act of 1984. Our problem threatens commerce along the United States-Mexican border, but unfortunately in a political sense it affects only the border States and therefore our concern has been that the Congress, preoccupied with large national issues, might not find time to deal with this problem.

And on behalf of all of the border Senators who are cosponsoring this bill, I want to thank you personally for taking your time, as probably the busiest man in the U.S. Senate, dealing with not only reform of the tax system, but with the funding of Superfund up on the floor today, for holding this hearing.

Senator **Packwood**. Thank you.

Senator **Gramm**. Mr. Chairman, our problem is a very simple problem, and let me try to relate it to you very briefly. We tend to look at the map of the Southwest and we see the Rio Grande, a river running through the continent, and we see one side of the Rio Grande River being the United States and the other side being Mexico.

And in setting our commercial policy, it is very easy to set that policy based on the assumption that there is a clear division. In reality, commerce, goods and services, flow across that border every day in the process of creating jobs.

We have, for example, in the twin plant system, the maquiladoro system, over a million American jobs tied to joint production that goes across the Mexican border. We have about 250,000 Mexican nationals employed on the other side of the border in providing basic economic support on which depend about a million American jobs.

Our problems with the Motor Carrier Safety Act as the law is now written and interpreted really boil down to a series of four major concerns, and I have drafted, in conjunction with the border Senators, a bill, S. 1252, the Foreign Motor Carrier Registration Act of 1985, a simple, straightforward piece of legislation to deal with these concerns.

The first concern has to do with the commercial zones. The Motor Carrier Safety Act of 1984 was primarily a law dealing with interstate commerce. The idea was to prevent Mexican trucks that did not have interstate licenses from operating in interstate commerce.

But there was a clear recognition that the border had specific requirements, so those requirements were dealt with by setting out a definition of a commercial zone that was roughly equivalent to the city limits and a band around that city limits of those cities that touch the border. As a result, in setting out the zones where commercial trucks can operate under the Motor Carrier Safety Act of 1984, the commercial zone is primarily the city limits and an area around that city limits of all the cities that are on the border.

Our problem is that many of our twin plants are not within the city limits, not within the commercial zones. Many of our produce sheds are outside the city limits and outside the zones. So the definition of the bill, while it fits in the general definition of commercial zones being areas, for example the city limits of Detroit, where the Interstate Commerce Commission does not have direct jurisdiction, it does not fit our needs so far as foreign trade is concerned.

Also, in the functioning of our customs system we deal not with commercial zone but with ports of entry. So the first change to be made by the bill simply goes from allowing Mexican carriers to come into the commercial zone, changing commercial zone basically to ports of entry, which includes the border counties and therefore those facilities, those joint plants, those produce sheds, those operations that are vital to jobs on both sides of the border that are within the contiguous county but that are outside the city limits in the commercial zone.

The second part of the bill has to do with safety standards within the commercial zone. As currently enforced, there are no clear safety standards set for the contiguous commercial zones. Clearly, the law anticipates that changing and we think it should.

But we are very concerned that the safety standards that are set within the trade zones be safety standards that are reasonable in terms of the country of origin of the trucks involved. We think it is vitally important that in setting out the safety standards for Mexican trucks coming into the country, that those standards take into account their manufacturing standards and take into account the cost and benefit in setting those standards.

We want standards that stop trucks from coming into the border areas of our country that have bald tires, that have brakes that don't stop within reasonable distances, that have steering mechanisms that are faulty, that have lights that don't work.

On the other hand, we are concerned that some impact of costs and benefits be taken into account of trucks that come into the country only once or twice a year, and that we don't end up with standards being set that are really aimed at keeping Mexican trucks out, standards that basically fit American manufacturing standards but don't fit the manufacturing standards in Mexico.

We want to protect safety, but we do not want to see safety standards used to prevent trucks from coming into the trade zone.

A third item has to do with insurance. It is common practice along the border to have Mexican trucks come in, bringing produce for example, but they may enter the country only 2 or 3 days a year. A requirement that they carry an insurance policy that covers them the whole year doesn't fit the economic circumstances.

To do that would impose such a heavy cost on a truck coming in, possibly from the interior of Mexico, driving up and coming across and delivering to produce sheds maybe twice or three times a year. To make them carry American liability insurance for 365 days a year would keep them from operating and would be unreasonable in terms of costs.

Our proposed bill simply deals with the problem by saying the objective of liability insurance is to protect Americans, so when a truck comes into the United States they have to have a certificate saying that for the period they are going to be here they are insured. They do not have to buy insurance, however, for a period that they are not going to be in the United States.

Additionally, we want to make it clear that the objective of the Motor Carrier Safety Act of 1984 was to deal with trucks, heavy vehicles that are engaged in commerce. And what we do in this bill is to exclude light motor vehicles, pickup trucks, and automobiles. I think it makes the whole bill cleaner in terms of ability to enforce it. Clearly, we could not inspect every automobile and pickup truck coming across the border.

Finally, I think it is important that we clean up some of the language of the Motor Carrier Safety Act of 1984, because there is great ambiguity that calls into question whether as many as 90 percent of the trucks coming across the border in some areas would even face any kind of safety or regulatory standards at all, and these are trucks that are on a for-hire basis that are carrying nonexempt goods.

So to sum up our bill, this bill, supported by the border Senators, seeks to set out a clear definition of areas that Mexican trucks can operate so as to make it possible for us to deal in the contiguous areas between our 2 countries, to preserve a million jobs on the American side of the border and 250,000 jobs in Mexico.

We believe that the logical way to do that is to deal with ports of entry rather than contiguous commercial zones. We think it is important to set out safety standards for trucks that are aimed at providing safety, but that take into account Mexican manufacturing standards, that take into account the clear costs and benefits of regulation, make the trucks safe but do not use safety standards to keep out Mexican trucks in an area of commerce where a million American jobs are involved.

We think it is important that insurance be required, but, Mr. Chairman, we want to require the insurance when they are in the United States. We do not want to see it become a barrier that will just mean that Mexican trucks cannot operate to service the twin plant system.

And finally, since I hear the final bells, meaning we have to go vote, we want to be sure that we are focused on the problem. We want to exclude automobiles and pickup trucks and put the whole focus of regulation on major trucks coming across the border that weigh more than 10,000 pounds.

Make the trucks safe; apply it to all of them, not just some of them as existing law might do. But make the standards reasonable, realizing that our objective is safety within the context that we want to keep jobs on both sides of the border.

And, Mr. Chairman, given the crisis in Mexico City that has occurred in the last 2 days, with thousands of people killed and commerce disrupted, I think that is another reason that we should do everything we can to keep the joint factory system operating along our border, to promote commerce and trade both in our interest and in the interest of the Mexican people.

Senator **Packwood**. As usual, Phil, you make a compelling presentation. I do not know how we never knew about this issue. We went all the way through the hearings. We must have had 5 years of truck hearings before we got to deregulation, and I do not recall any witness ever addressing himself or herself to this topic. No malice involved; we just did not know about it.

Senator **Gramm**. Well, Mr. Chairman, I can tell you how I heard about it. It was as if it was discovered simultaneously by every trucking operation, every twin plant, every chamber of commerce, all along my border. And of course, Texas has two-thirds of the border with Mexico.

And it was through the action of these private citizens in getting facts to me and to all of the other border Senators that we have unanimity on this bill on a bipartisan basis.

Senator **Packwood**. I thank you.

And let us take a short recess while we go vote.

[Recess.]

Senator **Packwood**. The committee will come to order, please.

I do not see Senator Domenici here yet. I do not know if he is going to show up, but until he shows up we will take the Honorable Ray Barnhart, Administrator, Federal Highway Administration. If by chance the Senator shows up, we will interrupt your testimony briefly to put him on.

Mr. Administrator, go right ahead.

STATEMENT OF HON. RAY A. BARNHART, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. **Barnhart**. I would like first to introduce our new Associate Administrator for Motor Carriers, Dick Landis. We swore him in and swore at him on Tuesday, so he has been made official.

Senator **Packwood**. You will get lots more of the latter as you go along.

Mr. **Barnhart**. But we all are very pleased Dick is on board. He has a distinguished background in Arizona and knows the problems and the challenges we face.

We are in the midst of our reorganization, as you undoubtedly know, and truly I think we will now begin to see the BMCS addressing some of those problems that they have been confronted with over the years, but frankly have not had the resources to fully address. We are quite enthusiastic about our reorganization.

Senator, I would like to submit a statement for the record, and I would like to restrict my remarks today to three specific areas: our MCSAP Program; an issue that goes beyond the trucking industry, but one which I think has been ignored for too long, that affects this entire country, and that is the insurance crisis that I think will be a major crisis, and we will all hear more about it; and then the problem of the border trucking, specifically in the State of Texas.

I would certainly not want to take issue totally with the distinguished Senator from Texas, who happens to be my Senator, in his analysis of the problem. I think he has much merit in what he says, but I would like to go into that in just a little bit.

Senator **Packwood**. I wish my fellow Oregonians had as much sensitivity to my feelings as you do to his.

Mr. **Barnhart**. The MCSAP Program. Many folks are talking about the need for additional Federal forces to get a handle on the trucking problems. Quite frankly, I do not think that is necessary and I do not think it is desirable. I do not think we need a 3,000 person Federal police force to go out and check out compliance and conformity with the Federal law regarding motor carriers.

Rather, I think we do have the answer in our MCSAP Program, whereby we will be funding the States to expand their operations within those States through Federal funds coming out of the trust fund. It has been quite successful in our development stage and we have what, Dick, 40-some States on board now—49—in developing a larger work force with more expertise to get into this area of truck inspection.

It is imperative that we have full funding for this program, and I say that acknowledging that we have not had that in past years nor this present year. However, I have been able to accept that because we have been in the development stage.

Very shortly, however, we will be able to prudently use all of the funds possible in order to expand this program. We must also have contract authority, for until we do the states will not enlarge their staffs because they have no assurance of continued funding to support the program.

That is about as much as I want to say on that, but I am excited about the program and it has gone quite well. But we will need a lot of support on that.

Now, regarding insurance, I would like to submit for the record a letter and an attachment that I sent to Senator Danforth and also to Congressman Howard last May 20, detailing what some of the problems are in insurance. It is especially pertinent to us in Federal Highway and in the Bureau of Motor Carrier Safety, because we have to ensure that the various companies meet those limits that are established by the Congress.

And quite frankly, that is not going to be possible. The insurance industry projects a shortfall of between $63 to $80 billion in capacity over the next 3 years. As we audit these carriers and see whether or not they comport with the required insurance coverage, when they do not we are going to have to put them out of business, we are going to have to fine them, and we are really going to have to disrupt the economy of this country.

But it goes beyond motor carriers: it hits everyone who has to have insurance and bonding capacity. I checked. I used to write insurance before I came up here, and I checked with an agency that I used to be with, to see if that problem had hit down in the Houston area, and it has.

And just to illustrate, one company we used to write had a $15 million umbrella policy. It cost them $18,000 a year. This year the most he could get was $5 million and the premium went to $87,000.

I am finding it in bus companies all around this country. One company in New England wrote the other day that where as their premium had been $47,000, it has now gone up to almost half a million dollars.

This is going to be a serious problem, and I know of no one who can address it except the Congress. So I would like to submit that for your consideration.

Senator PACKWOOD. Without objection.

[The letter referred to follows:]

DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
Washington, DC, May 20, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The motor carrier industry, both property carriers and passenger carriers alike, will be facing increased difficulties in securing the levels of financial responsibility coverage required by Section 30 of the Motor Carrier Act of 1980 and Section 18 of the Bus Regulatory Reform Act of 1982. As a result, the Bureau of Motor Carrier Safety will inevitably be placed in a no-win situation of major national implications, and with no ready solution.

The carriers must document proof of the specified coverage or face fines or suspension. Insurance rates for the motor carrier industry have already increased substantially during the past 6 months. Premiums (on a-company-by-company basis) for property carriers have generally increased by 20 to 300 percent. Premiums for passenger carriers have generally increased from 35 to 200 percent. Premiums, industry-wide, are expected to continue to rise over the next 3 years.

Present law requires coverage of up to $5 million and additionally must include an "environmental restoration" endorsement. The potential costs which might be incurred under this endorsement are unknown, for the term has not yet been well defined. Consequently, providers of insurance are reluctant to offer that coverage.

I have enclosed [1] a copy of an address by Mr. Daniel J. McNamara which was delivered to the 14th Annual Meeting of Insurance Services Office, Inc., for your information. He projects a 3-year insurance capacity shortfall of between $62 billion and $80 billion. Ninety percent of that deficiency would fall in the commercial lines area, i.e., trucking. Obvioulsy, I do not attest to the accuracy of that projection, but it does cause me great concern since he Insurance Services Office, Inc., is highly regarded as authoritative in industry matters.

Insurance agents have advised the Federal Highway Administration's (FHWA) Bureau of Motor Carrier Safety (BMCS) that some motor carriers are now purchasing financing responsibility coverage at levels lower than these mandated and/or without the "environmental restoration" endorsement. Thus, carriers doing this are unable to produce the Form MCS-90 endorsement upon request, as required by Federal regulation. Other motor carriers are purchasing the required levels of financial responsibility, but without the required "environmental restoration" endorsement. The end result is that such motor carriers are not in compliance with the law and are uninsured against claims involving "environmental restoration." Such action automatically places the motor carrier in a position of "knowingly" and "willfully" violating Federal law.

The BMCS safety management audits, completed in fiscal year 1984, indicated that approximately 25 percent of the carriers audited were in violation of our insurance standards. If in fact projections by the insurance industry of a critical shortage of insurance capacity comes to pass, one can only conjecture that the percentage of carriers not in compliance with the law will escalate.

The responsibility for enforcing the law is, of course, ours in the BMCS. We will not, cannot, skirt the issue. If a severe insurance shortage occurs, strict enforcement of our regulations will have broad economic impacts and could result in:

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[1] The enclosure has been retained in the Committee files.

1. Possible large fines against violation motor carriers.
2. A "ground swell" of resentment against strict enforcement.
3. An increase in the number of motor carrier bankruptcies.
4. Increased violations.

As can readily be seen, this insurance issue could dramatically affect commerce throughout the country in the near future.

The problem is not a creation of the Congress nor BMCS; nonetheless, we are entangled in it, and I feel the seriousness of its potential should be brought to your attention.

Sincerely yours,

R. A. Barnhart,
Federal Highway Administrator.

Mr. Barnhart. Now, getting up to the issue at hand, Senator Gramm listed several areas of concern, and quite frankly we share that concern. We are not sure that what has been proposed truly responds to those needs in a way that we can fairly enforce.

We have referred to the commercial zone, and they would like to expand that commercial zone area. They referred to going in some 100 miles inland. I have no objection, and obviously we are concerned about the economy of the border community.

At the same time, we do not have or I am not aware of any upheaval of problems over in California, Arizona, and New Mexico, and I would hope that what we do would not impose something that would disrupt the stability of our program over there.

So I hope we can work cooperatively to see that the expansion of those zones does not get out of hand and then impinge on our ability to enforce safety laws.

The safety standards. What the bill contains is not only a dual system of safety standards, but a multiple system of safety standards, when you consider the fact that we must enforce safety enhancements or mechanisms on vehicles according to the origin of manufacture of the vehicles. That would mean our people would have to know the pertinent information for vehicles manufactured in Sweden, Italy, Germany, and England, as well as South America. And I am not sure that we can administratively expect our people to be able to do that.

It does seem to us that it sets up a dual standard which is not going to be effective and not get what I think everyone would like to achieve, and that is to assure some safety on those roadways down there. Certainly we do not want gimmickry where you can preclude participation of the Mexican truckers over here, although I must confess that it is all one way, since our folks cannot go down to Mexico.

And then I have mentioned the insurance situation. Certainly we want to clean up any ambiguities. We do not believe in redtape, although everyone accuses us of trying to expand it all the time.

Most genuinely, we would like to work with you and Senator Gramm, whoever is interested, to remove those inequities. And I assure you that the careerists at Federal Highway and its leadership will be happy to work with you.

[The statement follows:]

STATEMENT OF R.A. BARNHART, FEDERAL HIGHWAY ADMINISTRATOR, DEPARTMENT OF TRANSPORATION

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Federal regulatory program applicable to the safe operation of motor carriers. It is my understanding, that we will not be discussing the Administration's recent trucking deregulation initiative today. I know that you plan future hearings on this important bill. First, I will briefly address the nature and extent of this important Federal program, as well as our recent efforts to combine the resources available to the Federal, State, and local authorities in the area of motor carrier safety.

NATURE OF THE FEDERAL PROGRAM

The Federal Highway Administration (FHWA), through its Bureau of Motor Carrier Safety (BMCS), is responsible for the regulation and enforcement of Federal requirements relating to the safety of operation and equipment of commercial motor carriers engaged in interstate or foreign commerce, and the safe transportation over the Nation's highways of hazardous materials. These Federal requirements, included in the Federal Motor Carrier Safety and Harardous Materials Regulations, cover a wide range of functions, such as the identification of hazardous materials, the procedures and container specifications for safe transport, and other safety requirements regarding driver and vehicle documentation, package labeling, vehicle placarding, cargo and equipment standards, driver qualifications, and hours of service.

Enforcement of these Federal requirements is achieved through several activities. One of these activities is the unannounced roadside inspection of vehicles, drivers, and cargo. This is performed by BMCS personnel with the assistance of State and local enforcement officials. The BMCS personnel also perform accident investigations and inspections of commercial vehicles and drivers involved in accidents.

Another vital enforcement activity involves the safety audit of records and equipment conducted at the motor carriers' offices and terminals. Carriers are selected for safety audits from among 216,000 carriers of record pursuant to a neutral selection criteria developed annually by BMCS, as part of the annual safety management audit program plan. The safety audit selection criteria identifies carriers in need of attention based on evidence of noncompliance resulting from roadside inspections, other investigations, accident experience, and indicators such as failure to report accidents over long periods of time. Carriers are also selected by generic class, such as hazardous waste haulers or bulk hazardous materials transporters, with or without evidence of noncompliance.

The results of the roadside inspections, investigations, and audits are documented in an investigator's report which is used in the processing of criminal and civil enforcement cases. The BMCS is also authorized to declare vehicles and drivers out-of-service if the safety of the traveling public is imperiled. Moreover, the results of the above described activities are also factors in determining the carrier fitness ratings which are furnished to the Interstate Commerce Commission (ICC), the Department of Defense, and upon written request, to insurance companies, shippers, and the public.

The Federal inspection and compliance activities have been, of necessity, targeted at the worst offenders, thereby maximizing the amount of improvement that can be accomplished within our personnel and resource limitations.

MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

In recognition that motor carrier safety and hazardous materials safety are mutual responsibilities of the Federal and State Governments, we have concentrated our expanded resources in the area of State grants, rather than attempting to expand the Federal presence. The Motor Carrier Safety Assistance Program (MCSAP) is a vital part of this effort. The MCSAP, authorized by the Surface Transportation Assistance Act (STAA) of 1982, is a cooperative endeavor between the Federal Government and States to promulgate and enforce uniform Federal and State safety and hazardous materials regulations applicable to all commerical motor vehicles and their drivers. One of the criteria a State must meet in order to qualify for an implementation grant is that the State adopt and enforce the Federal Motor Carrier Safety Regulations or similar State rules that are compatible with these Federal regulations. The objective of the program is to reduce truck and bus involvement in collisions by minimizing the hazards associated with large commerical motor vehicles on the Nation's highways.

Fiscal year 1985 is the first full year of the MCSAP. Forty-nine States are participating in the program, 28 in the implementation phase. The principal implementation activity will focus in the area of recruitment, hiring and training of State enforcement personnel. In order to ensure national uniformity, existing State enforcement personnel in addition to those recruited as the direct result of MCSAP are being trained in the National Driver Vehicle Inspection Procedures utilized in roadside inspection activity. A total of 1,500 officers are anticipated to receive training during this fiscal year. A cadre of 490 man-years of MCSAP funded personnel activity is expected to perform 300,000 inspections over and above the inspections that would be performed by the statutorily required State levels of activity. Cumulatively, the existing Federal and State, plus the added federally sponsored MCSAP activity, is expected to double the number of drivers and vehicles inspected in fiscal year 1985.

We currently are evaluating the State plans for fiscal year 1986. Fifty-one States and territories have applied for funding, 37 in the implementation phase. The projected funding for fiscal year 1986 is the same as received in fiscal year 1985 and is expected to reflect a slight increase over the fiscal year 1985 activity, primarily attributable to increased learning and efficiency of the current MCSAP sponsored personnel.

State grantees are also participating in the development of a Management Information System to compile improved roadside inspection and enforcement data. As States implement this data information system, the States and Federal agencies will be able to factor State inspection reports into safety management audits selection criteria. Therefore, the tens of thousands of State inspections will provide a larger data base of carrier noncompliance than FHWA presently is using for interstate carriers and give the States a similar capability for intrastate operations.

TRUCK SIZE AND WEIGHT

I would like to offer a brief progress report on the implementation of the size and weight provisions of the STAA of 1982 and the amendments to those provided by the Tandem Truck Safety Act of 1984. The most visible indication of the impact of the 1982 Act is the increasing number of doubles operations observed in the East since passage of the Act. After significant initial controversy and litigation, things seem to be settling down, and we are hearing of very few problems in actual operations. The States are working cooperatively with the industry to provide additional network miles or access where requested. Most of these additions are being provided under State law and authority, and we have not been involved.

There remain persistent problems in California with regard to access for 48-foot semitrailers which cannot meet the 38-foot kingpin restriction which is established by California State law. Although CALTRANS estimates that less than 1 percent of the vehicles in interstate operation are impacted by the provision, it has remained controversial and is the subject of litigation in the Federal Court in Sacramento.

Several States in the East have been slow to work out access problems mainly due to coordination with local jurisdictions, but considerable progress is being made. Overall, I feel that the provisions of the Act are widely followed. I am very pleased to report that our very close monitoring has turned up no safety problems arising from the introduction of the large vehicles. There are some problems establishing the grandfather lengths for semitrailers, but after several rounds of rulemaking, the dimensions have been resolved to the satisfaction of the States and industry in approximately 35 States. We will enter another round of rulemaking to establish the dimensions in the remaining States.

I would now like to describe several specific problems related to our enforcement of the motor carrier safety regulations which are of interest to this Committee.

MEXICAN TRUCKING OPERATIONS

The Motor Carrier Act of 1980, as amended, and The Bus Regulatory Reform Act, as amended, imposed financial responsibility requirements on most commercial motor vehicles operated on the Nation's highways. However, enforcement of these requirements in the case of foreign carriers, especially Mexican carriers, was and is obviously difficult to address. The BMCS has worked closely with the ICC and the U.C. Customs Service concerning the enforcement of regulations promulgated under both Acts as they pertain to Mexican motor carriers operating motor vehicles in the United States. Also, the ICC promulgated rules under section 226 of the Motor Carrier Safety Act of 1984 that require certain Mexican motor carriers to apply for, and receive, a certificate of registration before entering the United States and limits them to serving commercial zones contiguous to the border. As of September 6, the ICC had issued 42 of these certificates of registration.

The BMCS and ICC have developed and held training programs for Customs personnel. Currently, we are in the process of establishing dates for the training of additional Customs personnel. The assistance and cooperation of these agencies in obtaining compliance by foreign carriers with the Federal financial responsibility requirements will prove to be very helpful.

We are aware that concern has been expressed about the possible effects of Section 226 of the Motor Carrier Safety Act of 1984 on economic interests on the U.S. side of the border. The Department and the ICC have every made effort to make certain that the new limits on Mexican trucking operations do not unduly and inadvertently disrupt the flow of cross-border commerce. Consistent with this, the ICC rules specifically excluded from the new certification requirements the Mexican-owned and based for-hire carriers that carry industrial cargoes into the U.S. commercial zones along the border. This exclusion removed a major concern that had been expressed about the potential adverse effect of section 226 on the ability of the U.S.-owned plants in Mexico ("maquiladoras") to transport their products across the border.

We have also been sympathetic to the concerns of U.S. border interests that the boundaries of the ICC commercial zones, within which virtually all Mexican trucking is now confined, may not reflect accurately the economic realities of the highly interdependent border region. It was with this in mind that the Department supported the recent petition of the counties of the Rio Grande Valley to the ICC to reshape their commercial zones into a single integrated zone of greater extent so the U.S. businesses would not be injured by the effort to limit Mexican trucking operations to the border region. The Department is prepared to support similar petitions from other border communities if they make sound economic sense and would not unduly compromise our ability to enforce the law.

Through this flexible approach, we believe that we have been able to alleviate the major concerns that border interests have expressed about section 226. We view the actions I have just described as relatively minor adjustments to what are essentially economic regulations, and as being completely consistent with the intent of the law.

However, we understand that certain concerns persist, and that S. 1252 has been drafted to address them. Before commenting on the issues raised by S. 1252, let me state that we do not appear to be in fundamental disagreement with the authors of S. 1252 about the objectives we are seeking with respect to Mexican trucking operations in the United States. We agree that, because of Mexico's severe treatment of U.S. truckers seeking to operate across the border, Mexican truckers should have no more access to the United States than is absolutely necessary to serve the commercial interests of U.S. businesses along the border. We also agree that any Mexican vehicle operating in the United States must be adequately insured and safe.

In this respect, we have some serious concerns about the approach taken in the current version of S. 1252, particularly relating to safety. The bill would exempt foreign motor carriers operating foreign-built equipment from the safety requirements applicable to U.S. carriers and U.S.-built equipment. It proposes that the Secretary study and establish new safety standards for foreign motor carriers, taking into consideration standards of the country of the motor vehicle manufacturer, the financial burden that would be incurred by foreign motor carriers to meet U.S. safety fitness standards, and the detrimental economic impact of any such burden on cross-border commerce. In effect, the bill would have us establish a dual safety standard—one for U.S. carriers and equipment and a lesser one for foreign carriers and equipment. We simply do not see the rationale for establishing such a dual system, nor how it would help us achieve our objective of making certain that Mexican trucks are just as safe as U.S. trucks when they are operating in the United States. As currently drafted, the bill substitutes a test of financial burden for safety considerations, which we believe unnecessarily compromises the U.S. public interest.

The bill also proposes to replace the current border commercial zone limits on certain foreign motor carrier operations with broader commercial authority by defining those limits in terms of Customs port of entry boundaries, extending up to a maximum of 100 miles inland from the international boundary. The ICC regulations already afford communities the opportunity to petition for expansion of commercial zones, and as our support for the Rio Grande Valley coalition's commercial zone petition to the ICC indicates, the Department is not wedded to the existing definitions of commercial zones to define those limits. In any reformulation of those zones, however, we must be careful not to grant greater access to the United States for Mexican truckers than is warranted or to make these zones so large as to make enforcement of the law impossible.

On other matters raised in S. 1252—the ability of Mexican truckers to acquire insurance to cover only the periods of time they would actually be in the United States and possible exemptions from the requirement for certificates of registration for automobiles and light trucks used for commercial carriage—the Department has not yet developed a position. We would be pleased to continue to work with the Committee to address these and the other issues raised in S. 1252.

MOTOR CARRIER INSURANCE SHORTFALL

We have heard numerous motor carrier complaints about both the lack of availabilitty of liability insurance and significant increases in premium rates. The problem appears to be widespread throughout the insurance industry. Recent news reports indicate that most of the professions and many businesses, including trucking companies, are experiencing steep premium increases and difficulty in acquiring liability insurance.

The motor carrier industry's dilemma stems from the problems encountered by the insurance and reinsurance industries. The insurance industry is presently facing a capacity shortage. This shortfall, we believe, is real. In past years, the insurance industry has been able to invest its funds at high interest rates. When liability awards in other underwriting areas reached new highs and interest rates fell, the insurance industry suffered losses it is now trying to recover. This problem has been worsened by existing worldwide economic conditions and the strong position of the U.S. dollar in the world market.

The insurance industry is generally opposed to the higher mandated levels of financial responsibility that became effective January 1, 1985. They claim that the marketplace was working adequately at the lower interim levels and that there is no evidence available that supports the need for higher levels. Recently, the BMCS requested specific loss information from the insurance industry. One of the Nation's largest insurers submitted a 7-year history of accidents that resulted in paid claims or the establishment of loss reserves (the reservation of funds for expected future claim payments) in excess of $1 million each. During this 7-year period (1978–84), the company received claims from 22 accidents, each of which involved $1 million or more in settlements or reserves. Fourteen of those 22 involved commercial motor vehicles subject to Federal regulation.

The insurance industry also perceives a problem with future liability claims for "environmental restoration" whereby, under section 30 of the Motor Carrier Act of 1980, motor carriers would be liable for costs incurred to clean up spills of hazardous materials. The industry is concerned about possible future court decisions involving long-term residual damage. Insurers have told BMCS personnel that the insurance industry does not know what "environmental restoration" is. Because of this perceived problem, based on an unknown, the industry is very reluctant to insure a motor carrier for $5 million or more. The reinsurance industry is equally as hesitant.

Prior to the passage of the Motor Carrier Act of 1980 and today, claims resulting from releases of hazardous materials into the environment were paid under the "property damage" portion of a motor carrier's policy. When the required coverage was $1 million, the insurance industry was willing to take a chance and "live" with the term "environmental restoration." Now that the required level is $5 million, the industry is not willing to take that chance.

As you can see, this problem is not simple. However, we are aware of it and are currently studying it in order to develop solutions. This issue needs to be addressed. We would be happy to work with the Congress in this task.

CONCLUSION

In order to better meet and deal with the many complex and difficult issues involving motor carriers, I have begun to institute a number of changes in the way FHWA handles truck issues involving safety, reciprocity, sizes and weights, the designated system for larger vehicles and related matters. This week a newly created position of Associate Administrator for Motor Carriers was filled by the swearing in of Mr. Richard Landis, a former senior official with the Arizona Department of Public Safety. Last April the field staff involved in motor carrier safety matters was reorganized and reporting channel streamlined. A plan for reorganizing or regrouping of truck related functions at Headquarters is under consideration. These and other actions will improve our ability to focus on truck and bus issues and work cooperatively with the industry to reach resolution where possible.

This concludes my prepared statement. I would be pleased to respond to your questions or provide additional material for the record to clarify or amplify the steps that we are taking to further improve our motor carrier program.

Senator **Packwood**. Thank you.

I have got some questions for you, but I would like to take Senator Domenici first, and if you would stay around so that I can ask some questions.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Let me thank you for permitting me to give you my views.

Obviously, Senator Gramm deserves credit for tailoring the proposed amendments, and I wholeheartedly support that and compliment him for it. From my standpoint I want to present the issue as it affects New Mexico.

This is not one of those areas where I am here seeking anything like a dam or a highway for New Mexico. It is just that a couple of things about the present law seem to work a hardship on us and that hardship does not seem to be necessary and within the purview of our intent.

Earlier this summer, I visited the border area to learn firsthand what the problems were. During that trip, the economic impact of the Motor Carrier Safety Act of 1984 on this border trade zone was brought to my attention. Frankly, before that I thought it was a rather minor matter.

With all the other border problems, I was suprised to learn that reforming this law is a priority. The reason for its priority is the impact it is having. As I studied it with them, I found there were some things that I thought resulted in the opposite of what we, the Congress, had intended.

This law was passed to impose some restrictions on Mexican trucks operating in this country, and I think in a very real sense it was an effort to retaliate for Mexico's continued refusal to ease its ban on American trucking. And it had been in effect, from what I understand, Mr. Chairman, a long time, maybe 30 years.

The law requires certain Mexican carriers to obtain certificates of registration stating that they meet certain conditions and permits them to operate in a limited manner in border commercial zones. But instead of getting more access for American truckers and instead of getting foreign truckers to comply with the U.S. safety and insurance standards, the law has had the opposite impact.

In my State's case, it is the farmer, the rancher and the small businessman who have been hurt. My concern is with the 1984 bill and the Interstate Commerce Commission's definition of "trade zones," which is based upon population rather than trade partners and trade patterns.

This definition does not serve my State's interests, but rather puts New Mexico at a disadvantage. It does not take into account the natural trade flows in that part of my State, For example, El Paso, TX, and Las Cruces, NM, interact so extensively that neither the city boundaries nor the State border diminish the commercial bonds. The same is true at the other crossings, Columbus-Deming and Antelope Wells-Lordsburg. There goods and services move back and forth between these communities.

The majority of New Mexico's trade is through private Mexican carriers and involves livestock, produce, and agricultural equipment, not a lot, but for us something worth talking about; 5 million dollars' worth of equipment was sold by New Mexicans to Mexicans in 1984. Livestock trade in this region was $4.5 million in 1984.

Livestock and agricultural equipment is expensive to transport on a for hire basis, and Mexican farmers and ranchers cannot afford to pay the prices that the truckers demand in order to make their profit. Thus, the only alternative for the Mexican farmer is to travel to New Mexico, purchase the equipment or livestock, and drive it to Mexico in privately owned vehicles, many of which, as you might suspect, are rather old trucks, not the larger trucks that the 1984 act had intended to regulate.

Without the ability of these Mexican purchasers to enter the United States, my State's ranchers and small businessmen are going to continue to suffer economic loss, even though I do not think we have accomplished our goal of obtaining market access for U.S. truckers.

The 1984 law is overbroad and overreaching. It contains restrictions that are unnecessary. Senator Gramm would remove the restrictions that are causing these economic hardships. I think he has crafted a compromise that corrects the inequities.

The bill would replace the current population-based trade zone definition with one that is based on trade patterns using ports of entry, such as Columbus and Antelope Wells in my State, as the base for the interstate trade. That trade zone would extend 100 miles, and we understand that we are now talking only about that kind of trade zone for these purposes. But nonetheless, it would permit them to choose an area that had the trade relationships. This is also very important to us, along with making it easier for the actual transactions to occur, which is an issue you will receive a lot of testimony on.

I am not going to talk about the insurance provision because others are more expert and know more about it. I object to Mexico's restrictions which have persisted over the years, but I think this is a perfect example where we tried to retaliate and it did not work. I believe we ought to have some action by this committee so that we will correct the problems, and have the law work in such a way that all parties are treated fairly.

And I thank you, Mr. Chairman.

Senator **PACKWOOD**. Pete, I thank you. And as I told Phil Gramm, this is an issue that is foreign to us. We understood what we were trying to do in terms of forcing the Mexicans to allow our truckers in. We did not know the effect it was going to have on Americans along the border, and I hope we can correct it.

Senator **DOMENICI**. Thank you very much.

Senator **PACKWOOD**. Thank you.

[The statement follows:]

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, I thank you for allowing me the opportunity to testify on S. 1252, the Foreign Motor Carrier Registration Act of 1985.

Perhaps a little background is necessary, to explain why I am beforfe you today. Earlier this summer, I toured the New Mexico border, to learn first-hand what problems are particular to this area. During my trip, the economic impact of the Motor Carrier Safety Act of 1984 on New Mexican border trade was brought to my attention. This law was passed to impose stiff restrictions against Mexican trucks operating in this country, in retaliation for Mexico's continued refusal to ease its ban on American trucking, a ban that has been in effect for three decades. The law requires certain Mexican carriers to obtain a certificate of registration, stating that they meet certain conditions, and permits them to operate only in limited, border commercial zones. Instead of getting more access for American truckers, and instead of getting foreign truckers to comply with U.S. safety and insurance standards, the law has had the wrong impact. It is the American farmer, rancher, and small businessman who have been hurt by the 1984 law.

My specific concern with the 1984 bill is the Interstate Commerce Commission definition of a trade zone, which is based on population, rather than on trade patterns. This definition does not serve New Mexico's interests, but rather it puts New Mexico at a distinct disadvantage. It does not take into account the natural trade flows in the Southwest. For example, El Paso and Las Cruces interact so extentively that neither the city boundries nor the State border diminsh the common commercial bonds. The same is true for Columbus and Deming, and Antelope Wells and Lordsburg.

The majority of New Mexico's trade with Mexico is through private Mexican carriers, and involves livestock, produce, and used agricultural equipment. In 1984, $5 million worth of agricultural equipment was sold by New Mexicans to Mexicans. Liverstock trade in this region included approximately $4.5 million worth of dairy cattle for 1984, as well as a large goat market. Much of this is expensive to transport on a for-hire basis, and Mexican farmers and ranchers cannot afford to pay the prices that U.S. truckers demand in order to make their reasonable profit. Thus, the only alternative for Mexican farmers is to travel to New Mexico, purchase the equipment or livestock, and drive it home to Mexico in their privately-owned vehicles, many of which are merely old pickup trucks, and not the larger trucks that the 1984 act had intended to regulate. Without the ability of Mexican purchasers to enter New Mexico, my State's ranchers and small businessmen are continuing to suffer severe economic loses. In my opinion, these losses are unnecessary. Our government should not put these hard-working farmers, ranchers, and small businessmen out of work.

Senator Gramm's bill would remove the restrictions that are causing bankruptcies and economic hardship throughout New Mexico. It is a well-crafted compromise that corrects the inequities of the 1984 law. The bill would replace the current population-based trade zone definition, with one based on trade patterns. Using ports of entry such as Columbus and Antelope Wells as the base for interstate trade, the trade zone would extend for a 100 mile radius.

There is also a great need for amending the insurance requirement present in the 1984 law. The law states that Mexican truckers must carry insurance for the entire year, even through many private carriers enter the United States only several times per year. Senator Gramm's bill would permit foreign carriers to purchase short-term insurance.

The 1984 Motor Carrier Act does not regulate all foreign carriers in the same manner. This system of requiring different documents based on the payload and type of carrier, private or for-hire, is unnecessarily complicated, and leads to unfairness and confusion. S. 1252 would require a uniform registration for all foreign, for for-hire motor carriers.

While I strongly object to Mexico's restrictions on U.S. trucks, the retaliatory approach inthe 1984 law is clearly misguided. I firmly believe legislative remedial action is necessary, before the law disrupts years of economic development. I ask the Subcommittee to take the needs of New Mexico and other border States into account, as it considers the Foreign Motor Carrier Registration Act.

Thank you, Mr. Chairman.

STATEMENT OF HON. LLOYD BENTSEN, U.S. SENATOR FROM TEXAS

Mr. Chairman, the unknown impact of the Motor Carrier Safety Act of 1984 has created a great strain along the Texas-Mexico border. Last year, in a last minute House floor amendment to the Motor Carrier Safety Act of 1984, a provision was added prohibiting Mexican carriers from transporting exempt and regulated commodities into the United States beyond commercial zones at the United States-Mexican border. On July 1, 1985, section 226 (of the Motor Carrier Safety Act of 1984) became effective. These new regulations prohibit Mexican carriers from any operations other than those within the commercial zones at the United States-Mexico borders. Operations which are previously exempt from Commission regulations, such as private transportation of agricultural commodities, are now prohibited except within the commercial zones. As a result, the extent of the commercial zone at the United States-Mexico border has become extremely important.

I am a cosponsor of Senator Gramm's legislation, the Foreign Motor Carrier Registration Act of 1985, a corrective piece of legislation to the Motor Carrier Safety Act of 1984, which if implemented would preserve the ability of Mexican carriers to reach twin plants, produce sheds and warehouses in the border areas, presently served by such carriers. The bill would also require Mexican carriers operating along the border to meet reasonable "safety standards" (roadworthiness requirements) and carry adequate liability insurance.

Although the new regulations have been in effect since July 1, 1985, the ICC has not begun enforcement of the newly required certificates of registration, now required by all foreign carriers. I strongly urge that the ICC continue to postpone enforcement of these new regulations pending the Commerce Committee's evaluation of the instant legislation. One major area of concern is the requirement that foreign carriers obtain annual liability insurance. This requirement is difficult because many of these carriers cross the U.S. border seasonally, for many once—for most not more than four times a year. The foreign carriers of agricultural commodities have previously been allowed to enter the United States after obtaining "trip insurance" as opposed to annual liability insurance. The economic difference between year-round insurance and "trip insurance" is substantial, in light of their relatively infrequent crossings.

A second are of concern is the impact the Motor Carrier Safety Act, if implemented as authorized, will have on the four-county area of: Cameron, Starr, Willacy, and Hidalgo. Prior to the enactment of this statute, Mexican private carriers of regulated goods could transport goods into the United States well beyond the population-mileage formula commercial zones because such transportation was exempt from regulation. Similarly, Mexican private and common carriers of exempt commodities could transport such commodities into the United States and beyond because such transportation was also exempt.

The Rio Grande Valley Chamber of Commerce and the Rio Grande Valley [RGV] Trucking Coalition have filed a petition with the ICC asking for the establishment of a commercial zone for the above four counties. Unless this four county area is made one commercial zone, the Mexican carriers will not be able to deliver their produce to warehouses and produce sheds located throughout these counties. I fully support this request and have written to the ICC endorsing this proposal.

The economic realities of the Rio Grande Valley highlights the interdependence of the four counties located there: Cameron, Hidalgo, Starr, and Willacy. Within these four communities exists the public need for greater flexibility of transportation in the area, and the necessity to treat this natural geographic area as a unit in carrying out this national transportation policy. Technological advances in transportation and communications and the growth of agriculture, industry, and international trade within the four counties, which make up the Rio Grande Valley, lends support for the idea of making them part of one single commercial zone. Failure to reach this finding will disrupt normal business relations in the Rio Grande Valley, an area still recovering from severe environmental and economic hardships.

Mr. Chairman, I sincerely hope that an effective and fair policy will be established promptly by the ICC, regarding the implementation of the Motor Carrier Safety Act of 1984, pending the outcome of the corrective legislation introduced by Senator Gramm, of which I am a cosponsor, so that commerce and trade along the United States-Mexico border will not suffer.

STATEMENT OF MR. BARNHART—RESUMED

Senator **PACKWOOD**. Now, Mr. Barnhart, you mentioned insurance and it is clearly a problem for the industry. I mean, it is not just this industry; it is almost any industry involving casualty insurance.

The prices have skyrocketed. Medical malpractice is a form of casualty insurance. That has skyrocketed. But we are talking about the trucking industry today. What do we do about it?

Mr. **BARNHART**. Well, sir, I really do not know what the answer is. If I did I would probably be a consultant to an insurance company.

I truly do not, but it is obvious that in past years we have had a horrendous inflationary spiral, high interest rates. Under this administration we have brought the interest rates substantially down and the rate of inflation down.

Thus, the investments of the insurance companies at one time enabled them to write extremely low policy rates. For low policy rates, that day is over. They are going to have to get back into a market condition.

But it seems to me that there are some excesses in there. I do not know what they are. I think it is probably more for the Judiciary Committee to try to address. I have no answer. I am not knowledgeable in that field.

All I know is that Federal Highway and the Bureau of Motor Carrier Safety are going to be the fall person. They are going to be the fall guys for having to put trucking companies, bus operators, and what have you out of business for not carrying those levels of insurance that are mandated.

And I do not think it is the levels of insurance as mandated by the Congress that has caused the problem. I do not believe that at all. But certainly all of it contributes. I think it warrants some intense investigation or review on the part of the Congress, because I do not know who else can give relief to it.

Senator PACKWOOD. I am not sure I know the answer either. The insurance companies are losing potfuls of money on casualty insurance. If they are going to try to break even just on premiums, many industries cannot afford the premiums.

I am not sure I know the answer.

Mr. BARNHART. That is exactly what is happening now in highway work. Outside of the trucking area, where you get into some specialty type bridges and some of the new innovative stuff, they cannot get insurance on that. That has to be self-insured by the contractors.

Senator PACKWOOD. Is that right?

Mr. BARNHART. Yes, sir, and that is a toughie. Lloyd's are going out of that underwriting business.

Senator PACKWOOD. Let me ask you about your budget. The administration recommended $14 million. We of course authorized $30 million.

You do not have to live around even Washington, DC, very long to know there is a truck safety problem that seems to crop up on the beltway about once every 2 weeks. You surely do not have enough money to carry out this program.

Mr. BARNHART. No, I do not.

Senator PACKWOOD. Do you need more?

Mr. BARNHART. Yes, sir.

Senator PACKWOOD. How much more?

Mr. BARNHART. $14.1 million.

No, sir, I agreed to that reduced level because it made sense. We were simply in a transition stage of getting the States on board with this.

Senator PACKWOOD. If we were to appropriate more, you could use more? You could spend it wisely?

Mr. BARNHART. I do think we spend our money wisely in Federal Highway, probably more wisely than most other governmental agencies, which is a tribute not to me but to the bureaucracy, because it is really quite good.

Senator PACKWOOD. It is a tribute to the wise discretion of Congress in the amounts that we authorize.

Mr. **Barnhart**. We do not have time, Senator.

Senator **Packwood**. Let us move on to another subject.

Mr. **Barnhart**. But I do, certainly—and I would be most happy if you folks would recognize the problem, even at the danger of alienating some of the other folks who have serious budgetary problems to worry about. And I do not ignore that. I really appreciate that.

But this, we have got to have funding on this program and contract authority or we will have gutted everything we have been attempting to do in trying to get a handle on the safety issue regarding trucks.

Senator **Packwood**. Let me ask you a question about truck size. You say in your statement that, apart from California and a few Northeastern States, you think the access provisions are going pretty well. The truckers do not think so and they think they are being harassed. And I think, quite frankly, they are in many areas—less so in the West, forgetting California for the moment, because we are more used to larger trucks and we have had them for years and we are just used to them.

But what specific actions do you think Congress needs to take in order to get better compliance from the States with what we thought they should do? Do we need to define "reasonable access"?

Mr. **Barnhart**. I hope not, Senator, and I will tell you why. Because if you do, I know who will dominate that decision on what access is.

Senator **Packwood**. Who?

Mr. **Barnhart**. It will be some of those folks who are antitrucks and refuse to recognize how critically important the trucking industry is to the economy of this country. And you are going to get into all of the demagogic stuff about how terrible these doubles are and how terrible the 8½ foot wide rigs are.

Senator **Packwood**. And you think Congress would knuckle under to that and we would have a very narrow definition of "reasonable access"?

Mr. **Barnhart**. I am convinced of it, Senator. If I thought for a minute we could do something else, I would not be reluctant to recommend it.

Senator **Packwood**. Do not forget, now, this was the same Congress that authorized longer trucks, heavier trucks, and wider trucks over the objection of barrier States and over the objections of lots of States.

Mr. **Barnhart**. Yes, sir. And you are talking to the guy whose agency had to implement that, and it is a far cry from passing the law to implementing it, the same way as the 105(f) provision.

And really, it is a tough cookie. We have worked very well with the States and we have resolved many of these problems. I think we have made miraculous progress in the period of 2 years. We do have some recalcitrant States, there is no question about it.

I have got a real problem out in Wyoming, because Wyoming now wants to do what its neighbors are doing, which is entirely logical and does not damage the highways. But it is against the law and I am going to have to threaten to cut off their funds if they continue doing that.

Senator **Packwood**. What are they doing?

Mr. **Barnhart**. Well, they are using vehicles that they are not legally entitled to under their grandfather rights. Now, that grandfather situation is a terrible problem, because everybody thinks we have uniformity. Shoot, we do not have uniformity.

We have got a basic uniformity and then we have got grandfather rights throughout the country that allow exceptions to what everyone regards as uniformity. And then we are saddled with trying to make some sense out of it. I think we have.

But we get into one area, for instance here on the east coast, complaining because they have about a mile access. They want a national standard set by us. If we try to do this, we are going to disrupt the whole trucking industry in almost every State west of the Mississippi, where they have not had any problems.

But you get up here in the Northeast and some of those folks have never seen a twin 28-foot trailer. And I keep saying, hey, do not attack that twin 28-foot trailer as a safety issue. If you are concerned about safety, you look after that long 48-footer, because the problem is not the twin 28's.

But everybody in the East is used to seeing a single trailer and they do not know if it is 48 feet long or 40 feet long or 80 feet long. But they see a little old twin trailer and they say: Good heavens, I cannot have that monster going down by my house.

It is public perception, rather than fact. And in fact, when we have had the larger sized vehicles that you all in your wisdom mandated we have had no compromise of safety around this country. We have had excellent luck with those, but it is perception, Senator.

Senator **Packwood**. My last question: What do you think of the ICC's toying with the idea of creating commercial zones out of those four southern-most Texas counties?

Mr. **Barnhart**. Well, Senator, of course that is outside my bailiwick. And coming from Texas, I understand how that society operates.

Senator **Packwood**. Could it cause any safety problems?

Mr. **Barnhart**. It could. Yes, it could, as it is presently defined. I do not want to go to battle over this thing. I really would like to work with whatever Senators and House Members want to resolve this, because we would like to resolve it, too.

But that poses some serious problems to me, what they are doing in here on the standards that would be set for roadworthiness, and especially when you get into the national origin. My heavens, if we have to have a different standard for 15 different manufactured vehicles, I do not know how we are ever going to handle that thing.

So I think we can do a better job, but I think we have to think about it and work together on it.

Senator **Packwood**. Thank you.

Senator Exon.

Senator **Exon**. Mr. Chairman, thank you very much.

Mr. Barnhart, just one question. You partially answered it with your last statement with regard to highway safety. As you remember, there were many of us that were very much concerned and wrote some legislation into the deregulation act with regard to safety.

Do I understand you to say that the safety records of trucks—has it improved since deregulation?

Mr. **Barnhart**. No, I said we have not had any worse experience. We have had no compromise of safety with these larger sized vehicles. We see no difference in them.

Senator **Exon**. Let us just take the whole trucking industry, all trucks. Safety-wise, has there been any appreciable increase or decrease or are the accident rates about the same as they were prederegulation?

Mr. **Barnhart**. Senator, I would like to supply you some specific information on that.

What concerns me is that every time you have an 18 wheeler accident out here on the beltway, every daggone Member of Congress reads that and that becomes representative of the trucking industry for the entire country.

That is just not true. Quite frankly, we have got a serious problem out here and we are going to have to try to address it. I do not know how we are going to, because the whole road network has been messed up because of what Washington, DC, did to the interstate system. So it is a self-generated thing.

How we are going to get out of it, I do not know. But are going to have to address it.

[The following information was subsequently received for the record:]

Department of Transportation,
Federal Highway Adminsitration,
Washington, DC, October 3, 1985.

Hon. Bob Packwood,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, DC.

Dear Senator Packwood: When leaving the Russell Building after concluding my testimony before your Subcommittee last Friday, September 20, I realized I had unintentionally only partially responded to one of the questions you had posed. I would like now to complete the thoughts which should have been expressed at that time in order that the record may be complete.

I stated that the Congress was not responsible for the current insurance problem being experienced by some motor carriers, and that the increased limits the Congress mandated in the Motor Carrier Act of 1980 did not in and of themselves create the insurance capacity shortfall or the subsequent increase in insurance rates. In this regard I believe my testimony was correct. However, while concentrating on the increasing limits requirement, I neglected to discuss the "environmental restoration" clause which I believe has contributed to the problem of underwriting motor carrier risks. Insurers and motor carriers alike have expressed great concern over the inability to precisely define this phrase. The insurance industry, facing severe losses throughout their operations, is reluctant to accept liability for damages with no statutory or judicial definition. They are also concerned about potential court decisions which involve long-term residual damages.

Prior to the passage of the Act, and continuing today, claims resulting from releases of hazardous materials into the environment were paid under the "property damage" portion of a motor carrier's policy. When the required coverage was $1 million, the insurance industry was willing to take a chance and "live" with the term "environmental restoration." Now that the required level is $5 million, the insurance industry is not willing to take that chance.

This issue was discussed by the insurance industry representatives who testified at the September 20 hearing. The origins of the problem are not simple, and the solutions are not simple either. The Department is aware of the problem and is studying it to see what, if anything, should be done. I would like to offer to your Subcommittee and Congress our full cooperation in addressing these important issues.

I am also enclosing[1] for your consideration several recent letters received by the Department from motor carriers which illustrate some of the problems they are experiencing in obtaining the required levels of insurance.

Finally, I would like to respond to Senator Exon's question concerning the safety of the motor carrier industry after deregulation and, specifically, if there has been any appeciable increase or decrease in their accident rates since that time. The Department has carefully monitored the trucking industry's safety record since implementation of the Motor Carrier Act of 1980, and finds no valid statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations. Truck accident rates are about one accident per million miles for unregulated (exempt) carriers as well as for common and contract carriers, and overall were about the same for 1983 as for 1980. Preliminary figures for 1984 show a slight increase, but we have no reason to believe this is the beginning of a deteriorating trend.

Sincerely yours,

R.A. BARNHART,
Federal Highway Administrator.

Senator PACKWOOD. The beltway is our fault?

Mr. BARNHART. No, no, no, no. I said Washington, DC, not the Congress. I would tell you if I blamed you.

Senator EXON. He knows better than to do that.

Well, I travel the beltway very little, but I did hear or read about the latest concern, and there was a suggestion made, that seemed reasonable to me, that since the trucks enter and leave the beltway from the right lane, that they would relegate them to no more than 40 miles per hour and in the right-hand lane.

Is that workable?

Mr. BARNHART. No, I think that probably would worsen the situation, because so often it is the differential in speeds that causes that problem. And quite frankly, there are an awful lot of knuckleheaded drivers of passenger cars that create some of those things, but it is always the 18-wheeler that gets the blame for it.

But regardless of who is to blame, it is a serious problem and we do recognize it. We will be working to see if we can come up with an answer, by the way.

Senator EXON. Well, one of the things I suggest is that I presume that that beltway is carrying substantially more traffic than it was designed to carry.

Mr. BARNHART. Oh, it is doing that. It is really doing that. It is over capacity.

Senator EXON. I am not a highway safety expert, but it would seem to me that if a major roadway or any roadway is carrying substantially more traffic than it was designed to handle, that certainly enhances the likelihood of accidents, does it not?

Mr. BARNHART. There is no question about it. Certainly, the density——

Senator EXON. Are they consulting with you on that problem?

Mr. BARNHART. Yes, sir. I just had a conversation on that yesterday, as a matter of fact, with a Member of Congress, and told him that I would try to assemble a team to see if we could come up with some suggestions on it. Frankly, we try not to intrude, but at the same time I do not think that is intruding into a State's affairs.

I think it is a matter of national welfare that I think we have a responsibility to address.

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[1] The enclosures are in the Committee files.

Senator EXON. Thank you, Mr. Chairman.

Thank you, Mr. Barnhart.

Senator PACKWOOD. Thank you, Mr. Barnhart. We appreciate it.

Next, if we might have Mr. Hagans, Mr. Michie, Mr. Vale, Mr. Sollner, and Mr. Weeks.

Mr. Hagans, why do you not go right ahead, and your entire statement will be in the record in toto. We ask the witnesses to hold themselves orally to 5 minutes.

STATEMENTS OF DON HAGANS, GENERAL COUNSEL, EL PASO FOREIGN TRADE COUNCIL; DR. DON MICHIE, CHAIRMAN, DEPARTMENT OF MARKETING, UNIVERSITY OF TEXAS—EL PASO; SAM VALE, PRESIDENT, MEXICO-TEXAS BRIDGE OWNERS ASSOCIATION; GARY SOLLNER, PRESIDENT, REYNOSA MAQUILA ASSOCIATION, AND CHAIRMAN, RIO GRANDE VALLEY TRUCKING COALITION; AND WILLIAM E. WEEKS, EXECUTIVE VICE PRESIDENT, TEXAS CITRUS AND VEGETABLE IMPORTERS ASSOCIATION

Mr. HAGANS. If I could briefly indicate who I am, I am an attorney and a general counsel with my law firm to the El Paso Foreign Trade Association.

Each of us on the panel has a slightly different area of expertise and a slightly different background, and we wanted to give you as broad a scope as we could regarding the border trucking problem. Don Michie is chairman of the Department of Marketing of the University of Texas—El Paso, and has done a number of border studies relating to transportation, and the two of us are from West Texas-New Mexico.

Three gentlemen are from the valley. Sam Vale is president of the Mexico-Texas Private Bridge Association. He will discuss what happens with a number of bridges in the valley. We have an unusual situation in Texas in that all of our bridges are not government bridges. We have a number of private bridges also.

Gary Sollner is chairman of the Rio Grande Valley Trucking Coalition. He is also head of the Maquila Association. He is general manager of the Zenith plant located in Winosa, Mexico. He will specifically speak to the maquila or twin plant operations and the difficulties of the Motor Carrier Safety Act of 1984 in that regard.

And finally, Mr. William E. Weeks is president of the Texas Citrus and Vegetable Importers Association. He will speak to the citrus and vegetables and the commerce involving agriculture.

I would like to, if I could, Senator, address my comments to Mr. Barnhart's comments. We believe that Senator Gramm adequately and comprehensively explained the elements of his bill. We are strongly in support of that bill. It is the only legislation we have seen that really endeavors to solve the problem.

In trying to work with the ICC and the Department of Transportation, we have asked for suggestions, we have asked for comments on resolution to the problem. Everyone realizes the problems exist. No one else has come up with a solution.

Mr. Barnhart indicates that he has some serious concerns because there would be upheaval in California and Arizona, in that at the present time there is no problem there and so why change the status quo. I would say to Mr. Barnhart that the reason there is no upheaval at this point in time is simply because the ICC is not enforcing the Motor Carrier Safety Act of 1984.

For some reason, when the Senate and the House enacted that piece of legislation, section 226 utilized the words "motor vehicle" as opposed to "commercial motor vehicle." That means every pickup truck, every van that crosses the border, is subject to regulation.

In using the definition of "commercial zone," they simply limited the zones on the opposite side of the border for access to a definition that had been previously utilized by the ICC and the DOT to limit their jurisdiction, with no real sense of what actually happens on the border.

Mr. Chairman, at this point in time we are having a serious problem in that all of these trucks are in violation of the law. They are going where they went before. They are delivering to twin plants, they are delivering to produce sheds. Yet the law is not being enforced, so there is a problem, because if anyone chooses to enforce the law we have a serious difficulty.

Next with regard to safety standards, he said why have a multiple system. If the legislation is read carefully, all it says is that the DOT and the ICC shall use a balancing test in deciding what safety standards should be imposed on the border.

And we simply say in that balancing test, and Senator Gramm says in his bill in that balancing test, that you are to take into account the country of origin of the vehicle and the standards in that particular area and balance that against commerce and balance that against the safety of citizens in the United States.

Therefore, it is simply a balancing test to come up with tests having to do with tires and stopping distances. But you are not telling Mexico that a Dina rig cannot come into the United States because of the level of its headlights or where its muffler is located.

And as this committee well knows, there are detailed standards that are about to be put in place by DOT regarding manufacturing safety and fitness of U.S. commercial vehicles. That is important, but those vehicles are in the United States and manufactured in the United States.

In Mexico they have an economy whereby a large segment of the vehicles are manufactured in that country to European standards or other standards. There has to be a happy medium.

In addition to the two items that he mentioned, the commercial zones and the safety standards, I would like to comment briefly on certain other aspects of section 226, and each of the members of this panel will discuss other portions of the act.

That act as originally enacted and as originally interpreted by the Department of Transportation and as originally construed in a letter by the Ambassador to Mexico to the Government of Mexico would have excluded for-hire Mexican carriers from bringing nonexempt product into the United States, everything but produce.

We literally in El Paso have 600 tractor trailers crossing the bridge a day carrying those kinds of items by for-hire Mexican carriers, because of General Motors, because of Zenith, because of RCA, and a wide number of Fortune 500 companies that have operations in Mexico.

That act is ambiguous. The interpretation of that act was changed, and unless something is done legislatively the provisions of that act we felt that would be applicable previously can still be utilized in court to challenge border commerce.

Separate and apart from that, because of the reinterpretation of section 226 by the Department of Transportation and the ICC, those particular trucks are not now regulated at all. What the Gramm bill does is cause those trucks to be regulated, but put appropriate safety standards and appropriate zones of operation.

These commercial zones that Mr. Barnhart discussed are not practical. They are not reasonable in the valley, they are not reasonable in Texas or New Mexico, where El Paso has a route up to Las Cruces. The existing ports of entry are reasonable and valid.

We are not asking for a 100-mile wide zone that is arbitrarily set. All we are asking for is that zones, existing zones which are defined by customs, stay in place, and that if one is to expand those zones it is done a little more easily than having to go and change before the ICC the definition of a commercial zone.

I thank you very much for your time and attention, and we appreciate the opportunity to be here today.

[The statement follows:]

STATEMENT OF DON HAGANS, GENERAL COUNSEL, EL PASO FOREIGN TRADE ASSOCIATION

My name is Don Hagans, Our law firm is General Counsel to the El Paso Foreign Trade Association, which is composed of over 60 companies involved in commerce and trade between Mexico and the United States in the West Texas-Northern Mexico trade area. Members include customs brokers, transportation companies, import/export companies and the Mexican subsidiaries of companies such as General Electric, Zenith and other major U.S. manufacturers.

Thank you for allowing me to appear here today, Mr. Chairman. The members of the El Paso Foreign Trade Association are strongly in favor of enactment of the Bill presently before this Subcommittee which is entitled "The Foreign Motor Carrier Registration Act of 1985." The Bill is intended to clarify, amplify and resolve a number of issues raised following passage of the Section 226 Foreign Motor Carrier Certificate of Registration Provisions of the Motor Carrier Safety Act of 1984.

At present, Section 226 of the Motor Carrier Safety Act of 1984 is simply not being enforced by the Interstate Commerce Commission. The principal reason for this non-enforcement involves a lack of understanding regarding the provisions of 226 and the failure of foreign carriers subject to the Section to obtain appropriate certificates in accordance with the Section's requirements. Essentially, the Section and various regulations implementing the Section are in place, but due to confusion surrounding a number of the Section's provisions and the lack of an existing enforcement capability, nothing is really being accomplished at present.

My testimony is intended to first explain what changes the Foreign Motor Carrier Registration Act of 1985 makes to Section 226 of the Motor Carrier Safety Act of 1984, and second to explain the rationale behind those changes.

Turning first to what has been changed.

Certificate of Motor Carrier Registration.—The Certificate required of foreign motor carriers has been redesignated as a "Certificate of Foreign Motor Carrier Registration."

Carriers required to register.—All foreign carriers, private and for-hire, transporting exempt and non-exempt goods are now required to obtain certificates of registration.

Commercial motor vehicles.—Only commercial motor vehicles would be required to register.

Safety and roadworthiness standards.—Foreign carriers would be required to meet the "fit, willing and able" standards of safety roadworthiness set out in the legislation. A balancing test is utilized taking into account the practicalities of cross-border commerce.

Port of entry.—Foreign carriers would be limited in their operation to ports of entry immediately adjacent to the location at which they cross the border.

Trip insurance.—Foreign carriers entering the United States on a limited basis would be allowed to obtain insurance based solely on the duration of their stay in the United States.

Registration procedures.—Foreign carriers requesting access for a limited period would be able to obtain appropriate certificates at border locations within a reasonable period (to allow crossing).

Section 226 of the Motor Carrier Safety Act of 1984 was enacted in part to provide a bargaining position to obtain operating parity between the United States and Mexican trucking concerns. The President has the power to waive the provisions of Section 226 if Mexico takes what is deemed to be appropriate action. Mexican law regarding the operation of foreign motor carriers in the frontier zones is now roughly equivalent to that of the United States. There have been concerns, however, regarding equal enforcement of those laws along the border. This legislation in no way impairs the bargaining position envisioned in the original Section 226 of the Motor Carrier Safety Act of 1984. Importantly, this legislation also provides appropriate mechanisms for regulating foreign carrier activity that are consistent with the desire for a minimization of disruption to cross-border transportation.

CERTIFICATE OF MOTOR CARRIER REGISTRATION

During the rule-making period of Section 226, the U.S. Department of Transportation noted that the Interstate Commerce Commission already issues Certificates of Registration (under 49 U.S.C. § 10931) to motor common carriers to participate in the intra-state leg of a through interstate movement. To distinguish that certificate from the new certificate required of foreign carriers, the Department recommended that the new certificate be referred to as a "Certificate of Foreign Motor Carrier Registration." This legislation accomplishes that purpose.

CARRIERS REQUIRED TO REGISTER

Section 226 was originally construed by the Department of Transportation to disallow for-hire foreign carriers transporting non-exempt items from entering the United States. The U.S. Ambassador to Mexico originally informed the Mexican government, through the use of a memorandum prepared by the Department of Transportation purporting to interpret the various provisions of Section 226, as follows: "A strict interpretation indicates that for-hire carriers without Interstate Commerce Commission licenses (who at present can carry any kinds of cargoes into the commercial zones) will be restricted from July 1, 1985 (provided they obtain certificates of registration) to carrying only exempt cargoes from Mexico to the commercial zones in the United States."

Exempt items are principally produce and agricultural products. The vast majority of items being carried by for-hire Mexican carriers were and are non-exempt. Additionally, the great bulk of the items transported are products and components assembled by U.S. companies operating under what is known as the maquila program in Mexico.

At a later point, the Interstate Commerce Commission, upon recommendation by the Department of Transportation, "clarified" Section 226. Although the original interpretation of the Section would not have regulated carriers engaged in exempt and private carriage, the Interstate Commerce Commission stated that the licensing of carriers engaged in such transportation would indeed be required but that the for-hire carriers carrying non-exempt goods would not. There is still a technical debate regarding what Section 226 really says. An interpretation requiring for-hire carriers transporting exempt items to obtain certificates of registration while not requiring the registration of for-hire carriers transporting non-exempt items, makes no sense.

Section 226 (which at this point applies only to Mexican domiciled motor carriers of property) intended to ensure that Mexican trucks operating on U.S. highways were safe, adequately insured and current in their payments of highway use taxes. By failing to require registration of those carriers engaged in most cross-border transport, the purpose of the Section simply could not be met. This legislation takes a sensible approach by requiring all carriers to register, but makes the process somewhat less complicated than that originally contemplated by the Motor Carrier Safety Act of 1984. Approximately 90% of cross-border commercial traffic in locations such as El Paso, which involve for-hire carriers transporting non-exempt items, would now be appropriately regulated.

COMMERCIAL MOTOR VEHICLES

There is no justification for broadening Interstate Commerce Commission authority to include all foreign "motor vehicles" as opposed to foreign "commercial motor vehicles." For some reason, the definition of "commercial motor vehicle" contained in Section 204 of the Motor Carrier Safety Act of 1984 was not carried over into Section 226. Section 226 only refers to "motor vehicles," which are more broadly defined in the Code of Federal Regulations. "Commercial motor vehicles" are "vehicle[s] [having] a gross vehicle weight rating of 10,001 or more pounds." While possibly attempting to preclude commercial passenger vehicles from the ambit of 226, Congress inadvertently included pick-up trucks and other commercial vehicles that would not be regulated under any other circumstances. Without the appropriate modifications contained in this legislation, any private foreign carrier transporting exempt or non-exempt items in a pick-up truck or van would be required to obtain a Certificate of Registration—a result never intended under the original Act.

SAFETY AND ROADWORTHINESS STANDARDS

Sections 206, 210 and 215 of the Motor Carrier Safety Act of 1984 establish the "federal regulations" (Sec. 206), "inspection" (Sec. 210) and "certification of safety fitness" (Sec. 215) requirements that would be applicable to foreign motor carriers without an exemption. These requirements are quite stringent and would be pertinent if the existing exemption for intra-city operation under 49 CFR § 390.16 were removed. The Code of Federal Regulations establishes the exemption that presently exists regarding safety standards and other relevant requirements (except accident reporting and driver's log) during "intra-city operations." The exemption applies to municipalities and their surrounding commercial zone. The Federal Highway Administration and the Department of Transportation have recommended that the existing intra-city exemption be eliminated.

Comments were requested earlier this year to "support justification to warrant continuation of the exemption." During the various trips taken by the representatives of the Department of Transportation and the Interstate Commerce Commission to the border area earlier this year, it was emphasized that the exemption would preclude enforcement of stringent safety requirements regarding vehicles of foreign manufacture that were never intended to operate on a regular basis in United States interstate commerce.

If the exemption contained in the Code of Federal Regulations is not continued, for any reason, foreign carriers operating foreign-manufactured vehicles may not be able to meet new safety requirements under the Motor Carrier Safety Act of 1984 although these vehicles may be roadworthy for commercial purposes. This legislation seeks a middle ground with Interstate Commerce Commission designated standards and enforcement, but without the necessity of foreign carrier compliance with all U.S. safety fitness requirements (if the present exemptions are removed as anticipated). All insurance (except as to duration) and tax requirements have remained as in the Motor Carrier Safety Act of 1984.

PORTS OF ENTRY

Section 226 defines commercial zones for foreign carrier operation in terms of "a municipality in the United States which is adjacent to the foreign country or political subdivision . . . [or] a zone in the United States that is adjacent to, and commercially a part of, the municipality or municipalities." Although probably not intended, this definition would cause substantial difficulties in commercially integrated areas on the border where the parameters of cross-border traffic have been previously defined by U.S. Customs or Executive Order. The Department of the Treasury (Customs) and the Executive Branch, therefore, have been substituted for the Department of Transportation as to defining appropriate areas for foreign commercial carrier operation. An outside distance limit has also been placed on these areas to prevent potential abuses. Simply put, the definition "commercial zones" as now contained in Section 226, and as amplified by 49 CFR § 1048.101, was not designed with international commerce in mind.

The procedures outlined under 19 CFR § 101.1 and § 101.2 regarding "port[s]" and "port[s] of entry" were specifically designed with international commerce in mind and track existing transportation and commercial routes. Without the modification to Section 226 contained in this legislation, there would be significant artificial constraints imposed on cross-border traffic in the Rio Grande Valley.

The use of ports of entry as defined by Customs and/or Executive Order also appears to be a much more reasonable approach to achieve the goal of limiting access of Mexican carriers to interstate commerce as opposed to cross-border commerce. The ports are not necessarily tied to municipalities, and reflect existing transportation and commercial networks. Ports can be modified through a notice process in the Federal Register. Customs officials in the border area have made the point that there is simply no reason to have "commercial zones" different than the "zones" that now constitute the port of entry.

TRIP INSURANCE

A number of the foreign carriers transporting agricultural products only cross the border during certain seasons and on a limited basis. To require insurance for an entire year for limited crossing, does not make practical or economic sense. This legislation remedies this problem.

REGISTRATION PROCEDURES

A fairly attenuated procedure is now required to obtain Certificates of Registration whereby applications are mailed to Washington for review and approval. Particularly in those cases where limited crossing are involved, such as in the case of Mexican private carriers transporting agricultural products only once or twice a year, a long-distance registration procedure is totally inappropriate. The Interstate Commerce Commission should be allowed to establish procedures providing for registration to occur at border locations for individual trips of limited duration.

The overall intent of the Foreign Motor Carrier Registration Act of 1985 is to clarify and simplify Section 226 of the Motor Carrier Safety Act of 1984 while keeping the purpose of that Act in mind. Hopefully, this Subcommittee will recommend enactment of this legislation. Thank you again, Mr. Chairman, for allowing me to testify.

Senator PACKWOOD. Thank you.

Mr. Michie.

Mr. MICHIE. Thank you, sir.

My name is Don Michie. I am chairman of the marketing department at the University of Texas—El Paso, and I might also point out that I am a resident of the State of New Mexico. So the comments that I make will reflect my dual role.

Let me also say that the work that I have conducted concerning the transportation problem reflects interviews that I have conducted personally with trucking organizations along the United States-Mexico border, and those interviews were conducted with more than 25 to 30 truckers.

As Senator Gramm indicated, the border economy is a region that is separated by an international boundary and, although there are similarities within that particular region, there are also differences.

I think one thing really stands out as striking. If you take a look at the U.S. side of the border region, you will find that a comparison of per capita income for the border counties versus the average per capita income for the United States will indicate that the border region is underdeveloped.

In contrast, if you look at the border States for Mexico and look at its economic performance relative to that of Mexico as a country, you will find that the border of Mexico does better than Mexico as a whole. What I am simply saying by pointing that out is that the U.S. side of the border does not share in the American dream to the degree that the rest of the country does, and we need to implement legislation and economic development policies that will develop the border in a way that is fruitful and beneficial for all.

One of the problems that we have in the border economy is the instability that is in the region in terms of political, economic events. And I refer you to exhibit 1 of my testimony, which is a history of some of these destabilizing kinds of events that have occurred that prevent in essence the economic development to a degree that we would like to see it and to the degree that it ought to occur. And I might add, too, that those events are beyond the control of the border and what occurs there.

I would like to, second, call your attention to the border transportation system and point out to you that, if I may refer to exhibit 5, that transportation was not perceived to be a business problem, operational problem, prior to the Motor Carrier Safety Act of 1984.

Some work that I conducted last year indicated that transportation was not an issue. When the Motor Carrier Safety Act of 1984 got circulated and people became aware of it, it became a major issue and something that was a serious threat to the border area.

Let me explain the border transportation system with an example. In Mexico, obviously, trucking is regulated and concession is given to truckers to operate in particular areas.

In exhibit 3 I show what happens with nonexempt product under our classificational scheme, whereby nonexempt product is hauled by line carriers from the interior of Mexico into Mexico's border commercial zone, at which point a Mexican shuttle carrier or transshipper takes the product and crosses into the United States, into the commercial zone of the United States to a warehouse.

It is dropped off there and then it is transported from that point into the interior of the United States. The importance of this is that the shuttle carrier in many instances is a small Mexican company or individual who is operating to provide that kind of service. The charge of that particular shuttle carrier varies anywhere from $15 to $55 to make a haul.

The charge for a U.S truck that would wish access into the Mexican commercial zone is anywhere from $60 to $80. The point that I am trying to illustrate is that the U.S. carrier is not price competitive and probably would not get the business.

Let me also address the U.S. access issue, and the point that I really want to make is this, and that is that in most ports United States trucks do have access to the commercial zone of Mexico if they desire access.

Senator PACKWOOD. They do?

Mr. MICHIE. Yes, sir. And I have been in Laredo, in El Paso, Juarez, I have been in Calexico and over in Nogales. And in each of these ports, U.S. trucks do operate if they desire to do so or if certain circumstances, such as special equipment, require that these trucks operate.

So to say that we do not have access to these commercial zones is not true.

Senator EXON. May I interrupt for a question?

Mr. MICHIE. Yes, sir.

Senator EXON. What about the insurance? Are there not insurance problems when that truck goes across into Mexico, or is that handled some way?

Mr. MICHIE. Let me ask Mr. Hagans to address that.

Mr. **Hagans** Typically, there are riders on the policies which allow you access to let us say 18 kilometers into the interior or 22 kilometers into the interior of Mexico. So U.S. insurance with a rider will cover that.

So if you have a private carrier that, say, works for General Electric, that private truck will be insured. If you have a for-hire carrier, they are also insured with a rider.

Senator **Exon**. Thank you. The thrust of my question was, sometimes people are allowed access into an area, but the insurance rates are so high that they are not practical. And that is not the case here?

Mr. **Hagans**. Not with the type of transportation we are talking about, where it is limited solely to the border. Now, if a private company, which is the case with Chihauhau and some other cities, wishes to go into the interior of Mexico, they are allowed to do so. Then you have a different insurance problem and you have to obtain Mexican insurance.

Senator **Exon**. But for what we are talking about here today, they do have free access? That is the point you are making?

Mr. **Hagans**. Yes.

Senator **Exon**. Thank you.

Mr. **Hagans**. Which we felt was not an accurate statement. The Luis Cortena decree in 1975 technically as far as Mexico is concerned grants access to the frontier zones by both forhire and private carriers in the United States private carriers in the United States can go into the interior of Mexico under special licensing.

What is precluded are for hire U.S. carriers operating in the interior. And we have done the same thing now in the United States. Since 1982 we have told them they cannot come in our interior. But as far as parity, legally we are on equal parity now.

Senator **Exon**. I took some of his time, Mr. Chairman.

Senator **Packwood**. Go ahead, finish up, Doctor.

Mr. **Michie**. Thank you.

Let me just conclude by saying this. This is not a regional problem. This is a national problem. Senator Gramm stated it well when he indicated that if we interrupt the flow of commerce across that border we are talking about a million to a million and a half American jobs directly. And because the maquila plants are operating just on time and inventory, we are talking about a million jobs in less than 2 weeks.

And let me also say that we have a transportation system on the border that works. It is functioning on a daily basis. I am not saying that it is as efficient as it might be, but I am saying that it is effective.

And with that, thank you.

[The statement follows:]

STATEMENT OF DON MICHIE, PH.D., CHAIRMAN, DEPARTMENT OF MARKETING, THE UNIVERSITY OF TEXAS AT EL PASO

My name is Donald A. Michie. I am chairperson of The Department of Marketing, The University of Texas at El Paso, El Paso, Texas. I have been a border resident for seven years and have worked professionally investigating barriers to the border commerce. My knowledge of border transportation issues stems from research sponsored by The State of New Mexico, The University of Texas at El Paso and The U.S. Department of Transportation. As part of this research I have toured the border discussing transportation problems with transportation managers, custom house brokers, community leaders and government officials from Mexico and the U.S. My testimony reflects an assessment of the border transportation system after having obtained information from these sources.

I appreciate the opportunity to appear before you to discuss border transportation issues. My testimony is divided into several sections, including the Border Environment, The Transportation System, The Barriers to Effective Transportation, The Impact of MCSA (1984) and the need for the passage of The Motor Carrier Safety Act of 1985.

THE U.S.-MEXICO BORDER ENVIRONMENT

Mexico is one of our largest trading partners. Of the more 29 billion in trade (1984) dollars, at least seventy percent of this amount crossed the U.S.-Mexico border via surface transportation. The trade included a variety of products and commodities including petroleum, chemicals, minerals, metal, machinery and equipment, textiles and apparel, produce, livestock and many others. Most of these products were transported by motor carrier. The U.S.-Mexico Border Region is an anomaly. Much literature has been written about "Mexamerica", a binational, bicultural and bilingual regional complex divided by an international boundary. The interdependence of the region is reflected by its socio-cultural, political and economic dimensions. Although interdependent, the U.S. and Mexican sides of the border region have contrasts. The book, "Distant Neighbors" by Alan Riding, documents the socio-cultural and political differences. Several studies have documented the economic contrasts. For instance, the per capita income of U.S. border counties is less than the average per capita income figure for the United States. The per capita income of Mexican border state is higher than the average per capita income for Mexico. Hence, within their respective economies, the U.S. border is underdeveloped and the Mexican border is developed. It should be U.S. government policy, then, to foster the economic development of the U.S. border region in order to provide its citizens with their rightful share of "The American Dream." Unfortunately, U.S. government policy has not promoted the economic growth of the region.

The economic vitality of the U.S. border region has languished under the economic-political policies of the federal governments of the U.S. and of Mexico. Exhibit 1 cites some of the destabilizing events of the last two decades. These events regularly tarnish the "image" of the border as a location for capital investment and industrialization. For example, the textile and apparel bills, S. 680 and H. 1562, would restrict Mexico's export quota. This restriction would limit U.S. investment by the textile and apparel industry in the border region, despite the fact that a substantial portion of Mexico production is enabled by TSUS Item 807.00. These Mexican products contain components that are of at least seventy five percent U.S. origin. The negative impact of MCSA (1984), if the law had been enforced as originally written (See Exhibit 2), would have had an even more destabilizing effect on the border and on the national economy of the U.S. Given that up to ninety percent of Maquiladora production is transported across the international border by Mexican shuttle carriers, Maquiladora production would have been halted, because MCSA 1984 provided that these carriers would have been limited to the transport of exempt products only. Within two weeks of its implementation, American industry has forecasted the layoff of over one million U.S. production workers. These events urgently require legislation that is based on an understanding of the dynamics of the border economic system. We are here today to explain the border transportation system and to suggest legislation that can accomplish U.S. regulatory objectives while keeping commerce flowing.

THE U.S.-MEXICAN BORDER TRANSPORTATION SYSTEM

The Border Transportation System operates through ports of entry. POE's are simply conduits for the transportation of commercial and non-commercial traffic between the U.S. and Mexico. The commercial motor carriers that operate through the POE's may be for-hire (common contract), or private carriers; each haul exempt and non-exempt products. The carrier involved depends on the type of the product, and on the arrangement made with Mexican officials for access to the Mexican frontier zone.

A typical tansportation scenario for non-exempt products might involve the transport of smoke detectors (by a Mexican line haul carrier) from an assembly plant located in Cuidad Chihuahua, to its transportation facility in Cd. Juarez (See Exhibit 3). The trailer is picked up by a Mexican shuttle carrier for transport through the POE to a transportion facility in El Paso. In El Paso, the trailer is picked up by a

U.S. Line carrier for distribution in the interior of the U.S. With few exceptions, the Mexican "shuttle" carriers transship for-hire carriages through the POEs. In addition the Mexican shuttle carrier transships most private carriages, especially those owned by U.S. firms through the POEs. It is estimated that up to ninety percent of Maquiladora production is transshipped by Mexican shuttle carrier. Exceptions can be negotiated or may exist where the movement of the product requires special transport equipment. These products may include chemicals, propane, etc. Such exceptions, as in Matamoros, may require payment for a "Phantom Driver" to effect transportation. Although trucks entering the city do not hire a Mexican driver, the carrier pays for the services of a driver as if he were present. This description is typical of border transportaion systems found in Brownsville-Matamoros, El Paso-Cd. Juarez and Nogales-Nogales.

The transport of exempt products through the ports of entry is different (See Exhibit D). A large percentage of exempt products is privately owned and transported. For instance, small growers from the interior of Mexico haul their own products through the Nogales POE to packing plants located a few miles north of Nogales, Arizona. Cattlemen from the State of Chihuahua haul livestock to the Columbus POE for transfer to U.S. buyers. However, they purchase livestock in New Mexico and transport it, using their own vehicles, into Mexico. Mexican farmers often purchase used farm equipment and machinery from U.S. farmers; the Mexican farmer uses his own truck to pick up and deliver these items into Mexico. These transactions resulted in the addition of more than 10 million dollars to the New Mexico farm economy in 1984.

What factors explain the border transporation system? First, Mexico operates transportion services on a concession basis. A concession is a license to operate issued by the Mexican government. For example, the Olaiz family holds the Mexican concession for the transport of goods within Nogales, Sonora Mexico. The family does not hold the concession for transportatin of goods from Nogales to points in the interior of Mexico. These concessions are held by other Mexican transportation companies. Any movement of products within Nogales, Mexico, however, is almost exclusively handled by an Olaiz vehicle. In Matamoros, the concession is held by two groups. The CTM group is an association of twenty owners operating thirty-two tractors. The other group is a family business similar to the Olaiz family in Nogales. The second factor explaining the transportation system is that, although the Ruiz Cortines Decree (1955) established the precedent for the operation of U.S. carriers in Mexico's frontier zone, few U.S. carriers desire to operate there. The barriers limiting operation are numerous, including the: (a) traffic law, (b) road conditions, (c) harassment by police and unions, etc., (d) concession for the movement of goods within the customs yards of Mexico, (e) language, (f) damage to equipment, (g) time and cost associated with crossing through the POE, (h) Mordida and (i) lack of price competitiveness. As evidence of the lack of price competitiveness, a U.S. carrier would have to charge $60-$80 per haul. The Mexican Line carrier would have to charge at least $130. But Mexican shuttle carriers' charge range between $15 and $55. A U.S. traffic manager with over forty years of border trucking experience said "Given the barriers, it's only those who lack an understanding of the freight business who favor entry into Mexico."

The necessity to transport exempt products and used farm equipment by Mexican private carriers can be attributed to several factors. First, many Mexican farmers have small farms and cannot afford to pay the high freight charges expected by transporations companies. Second the products are bulky and not easy to handle, making the business less attractive to transportation companies. And third, it's difficult to standardize equipment ot haul used farm machinery, tires, appliances, etc. The attitude of U.S. and Mexican trucking companies is that the business is not worth the problems associated with the service. Hence, Mexican farmers have been permitted to provide their own transportation on both sides of the border.

The point is that the transportation system that has operated within the border region has worked well. Exhibit 5 shows that prior to MCSA (1984), businesses located in the El Paso—Cd. Juarez trade area did not rank transportation as a serious barrier to the effective flow of commerce through the El Paso—Cd. Juarez POE. Barriers to the flow were attributed to port administration and capacity issues. *The passage of MCSA (1984)*, however, made transportation the most significant threat to the effective flow of border commerce.

THE MOTOR CARRIER ACT (1984): ITS IMPACT

As drafted, the MCSA (1984) was intended (1) to restrict non-licensed ICC foreign motor carriers (FMCs) to the ICC commercial zones of the United States, (2) to impose regulation by certification of all classes of FMCs and (3) to require that FMCs comply with U.S. insurance standards. Other inferred objectives included: (a) eliminating competition from Mexican motor carriers in the interior of the United States and (b) sending a message to Mexico concerning its prohibition on U.S. Trucking access rights to Mexico. Each of these goals was desirable. The difficulty was twofold. First, the Legislation accomplished none of these objectives. Second, the Act lacked the effective transportation of commerce through the border region as an objective, however, a basic understanding of the border and its transportation system would have enabled MCSA (1984) to have been drafted as an effective transportation law.

Restriction of FMCs to ICC Commerical Zone.—The restriction of FMCs to the ICC commercial zone requires the joint cooperation of federal, state and local authorities. The Legislation made no provision for such cooperation. To be effective, enforcement would require the cooperation of the ICC, U.S. Customs, U.S. Border Patrol, U.S. Department of Agriculture, State Police, and County and City Police. Another problem with the commerical zone issues is that federal agencis define the zone differently. The ICC zone for El Paso extends ten miles beyond the city. The Bureau of Motor carrier safety zones extends five miles. It's possible that a certified FMC could be operating illegally given these differences.

Regulation by Certification of All FMC.—The certification of all FMCs was proper. The problem developed when the Legislation specified the classes of product that specific carriers could haul. For-hire Mexican Carriers, if certified, would have been restrict to hauling exempt products only. As mentioned, up to ninety percent of the Maquiladora's production of non-exempt products is transported by Mexican Shuttle carriers. The provision was thus unrealistic.

The inner-agency interpretation of MCSA (1984) resulted in ligislation that was unjustly discriminatory and perhaps illegal (See Exhibit 6). The IA interpretation exemptd for-hire FMCs from the certification/regulation process. Why this carrier? Because the act was unrealistic as originally drafted. For-hire FMCs should have been permitted to haul non-exempt products.

Regulation of U.S. Safety and Insurance Standards.—The law required compliance with U.S. Safety Standards for vehicles of foreign manufacture. The cost of compliance was estimated to vary between $1200 to $5000 per vehicle. Further, safety was not accomplished because of the Intracity Exemption from U.S. Safety Standards. Under this exemption, FMCs operating within the commerical zone were exempt from Sections 391–393, 396–398 of the Federal Motor Carrier Safety Regulations. Section 393–396 regulates equipment parts and accessories as well as inspection repair and maintenance. Hence, MCSA (1984) offers no safety protection to U.S. citizens.

Elimination of Unlicensed FMCs from Competition with U.S. Line Haulers.—The IA interpretation, and the lack of cooperation among federal, state and local enforcement authorities rendered this objective impotent.

A Message to Mexico.—MCSA (1984) did not communicate a message to Mexico for several reasons. First, the Act, designed to hurt Mexico, would have hurt the U.S. first and foremost. As mentioned, more than one million U.S. production workers would have been laid off as a direct result of the Act's enforcement. Second, Mexico considers the Act a threat to its sovereignty and independence. Ambassador Gavin's letter stated our intent clearly. It was a punitive retaliation for Mexico's intransigent position taken before the Joint Commission on Commerce and Trade (JCCT) concerning access to Mexico. To date Mexico has not responded formally to the MCSA (1984). Why should they? We blinked!

At this juncture, I would like to introduce the results of discussions I have had with U.S. and Mexican business people, including some who are in the trucking business (See Exhibits 7 and 8). These findings include:

1. *Awareness And Knowledge of MCSA (1984).*—Most carriers (domestic and foreign) are unaware or not knowledgeable about the provisions of MCSA (1984). This conclusion is also supported by the limited number of applications for certification received by the ICC.

2. *Competitiveness of U.S. Trucker's in Mexico.*—U.S. truckers are not price or service competitive in Mexican markets, either in the frontier zone or in the interior. U.S. truckers charge in excess of sixty dollars to haul into Cd. Juarez versus the Mexican shuttle carriers' charge of 15 to 55 dollars. Mexican line haulers have equipment to haul 80,000 to 100,000 pounds versus the U.S. truckers 40,000 pound capacity limit. These factors, combined with other operational difficulties, make U.S. competitiveness in Mexico unlikely. One trucking executive stated, "If Mexico were to open its borders to U.S. truckers, the problem of U.S. competition would be solved within two weeks. U.S. fleets simply could not operate there."

3. *Access by Mexican Truckers to the U.S.*—Mexican truckers will take what they are given. They feel that the United States has unilaterally made it possible for them to operate here. If U.S. Safety Standards are too restrictive, they prefer to have U.S. trucks pick up trailers at Mexican customs lots.

MOTOR CARRIER SAFETY ACT, 1985: AN EVALUATION

Given the shortcoming of MCSA L984, Congress is advised to consider alternative legislation designed to accomplish the aforementioned objectives. The proposed bill would benefit the national interests of both nations by providing for the effective transportation of border commerce: a prime objective. It would solve the deficiencies cited for MCSA by:

1. *Requiring the Certification of All FMCs whose gross weight exceeds 10,000 pounds.*—The bill does not discriminate among carriers and permits them to haul all products they are equipped to haul.
2. *Restricting All FMCs to a border commercial zone.*—This provision is desirable for for-hire FMCs but should not apply to private carriers of exempt and non-exempt products. The private carriers are not in competition with U.S. carriers, who lack the appropriate equipment or the desire to service this trade. I recommend that private carriers be permitted to haul products within the border states or to a 300 mile limit, whichever is the lesser distance.
3. *Specify a Roadworthiness Safety Standard and Trip Insurance.*—These provisions recognize that most FMCs operate tractors of foreign manufacture for which safety upgrading is very expensive and unnecessary. If the intra-city exemption is abolished, the roadworthiness safety criterion would increase motor vehicle safety in border communities. The inspection procedure and enforcement provisions would provide assurance of compliance.

Trip insurance is necessary because most Mexican carriers, especially private carriers of exempt products, make few trips per year into the United States. Annual insurance causes an undue hardship for these businesses.

In conclusion, we need to recognize that Mexico is an independent, lesser developed nation, Mexico is not like Canada, which shares a common heritage and a similar economic development status with us. We must treat these two neighbors differently on transportation issues. We repeatedly make overtures to Mexico in the form of legislation and administrative decisions which make sense in our society's value system. Because of fundamental differences in our cultures and histories, these good intentions are interpreted as "big brother" dictating to "weak sister". Because we value free enterprise and open our doors to competition from Mexican trucking does not mean that we are entitled to demand that Mexico do likewise. Let's stop imposing our values on Mexico! Adopt MCSA (1985) as a law that will facilitate the effective flow of commerce and that will achieve parity on the trucking issue with Mexico. Mexico will decide what values are acceptable to itself.

EXHIBIT 1—ECONOMIC AND POLITICAL EVENTS THAT HAVE DESTABLIZED THE ECONOMY OF THE BORDER REGION SEPTEMBER 21–NOVEMBER 7, 1969, U.S. CUSTOMS SERVICE

September 21-November 7, 1969, U.S. Customs Service "Operation Intercept".—This operation, extending for a period of seven weeks, employed the detailed inspection of each motor vehicle entering the U.S. at El Paso. Although the Customs Service increased their border inspection staff by 66% during this operation, vehicle travel was severely curtailed. Border crossing time at existing facilities was extended to periods of up to 2.5 hours, with resulting lines of traffic clogging city streets that lead to the international bridges in Cd. Juarez. This operation had no noticeable or lasting effect on border crossing trends.

December, 1971, (Effected 1974), Mexico Customer "Articulos Gaucho" Act.—This change in customs policy permits a number of personal-use articles manufactured in the U.S. to be brought into Mexico duty free on a wholesale basis, for domestic resale in the Mexican border zone. Previous to this Act, only a limited number of personal articles manufactured in the U.S. could be brought into Mexico duty free by a single individual.

Under the old regulation, El Paso served as a giant shopping center for Juarez citizens, who enjoyed the opportunity to buy U.S. goods at competitive prices. Additionally, as a service to those Juarez citizens who could not obtain border crossing visas for shopping or who did not care to cross to El Paso, "runners" from Juarez retail stores made several trips daily across the border to buy handfuls of goods for resale in Juarez at prices slightly higher than those found in El Paso.

August, 1976, Decrease in Valuation of the Mexican Peso.—The initial impact in El Paso when the peso was devalued to approximately ⅓ of its previous value against the dollar, was severe, especially on travel and on shopping at stores near the border. In subsequent years, travel gradually increased as Mexican citizens adjusted to this change in their economic lifestyle. Crossings at the Santa Fe Bridge, which is most used by Juarez citizens of lower income status, still indicate the effects of the peso devaluation.

August, 1982 and October, 1982, Decreases in Valuation of the Mexican Peso.—Further reductions in the value of the peso again seriously affected the volume of international trade and traffic between El Paso and Cd. Juarez. The effects of this dual reduction are still being felt by downtown merchants. Another observation about the data in Table 6 pertains to the composition of traffic between freight carrier vehicles (loaded trucks) and all other vehicles. In 1982, commercial freight carriers accounted for less than one percent of all vehicular clearings. This fact certainly should not be interpreted to indicate the relative unimportance of commercial freight. To the contrary, the maquila plants transport large dollar value shipments of commerce by truck through the port. Thus, these data underscore the unique position of El Paso among other U.S. ports of entry, particularly seaports: in El Paso the extensive daily co-mingling of commercial and non-commercial border crossings greatly magnifies the potential socio-economic impact of an ineffective transportation system.

June, 1984, U.S. Insurance Requirements for Mexican Trucks.—Commercial vehicles of Mexican registry weighing 10,000 pounds or more were required by U.S. law to purchase U.S. insurance before entry into the United States. These trucks were required to obtain $500,000 bodily injury liability coverage and to obtain an MCS 90 form. Vehicles without appropriate insurance were refused entry into the United States. Numerous Mexican vehicles were denied entry.

July-August, 1984, Seizures of Mexican Manufactured Automobiles.—U.S. Customs Law required that automobiles purchased in Mexico must be declared upon entry into the United States. U.S. citizens and resident aliens who had purchased such vehicles are required to declare these vehicles and to have (1) paid duty on the purchase price, and (2) modified the vehicles to comply with Environmental Protection Agency (antipollution) and U.S. Department of Transportation regulations (safety). Automobiles not declared and/or not complying with U.S. law were seized as contraband.

August-September, 1984, Mexican Customs Response to U.S. Customs Activities.—Most often, an action by U.S. governmental agencies to enforce U.S. law not previously applied to Mexican citizens results in a reaction by Mexican governmental agencies. During the period of insurance and automobile seizures, Mexican authorities responded in two ways. First, Mexican authorities began to seize U.S. manufactured cars owned by Mexican citizens. In addition, Mexican citizens employed in Mexico, who had not paid Mexican duty (10%) and had not registered their vehicles in Mexico, had their automobiles seized. Second, Mexican citizens who purchased more than $25.00 (U.S.) of non-restricted goods were required to declare them and to pay duty.

February-March, 1985, U.S. Drug Enforcement Agency Incident.—In response to the death of a U.S. DEA agent in Guadalajara, U.S. Customs were told to increase the inspection of vehicles crossing into the United States. The increased inspection requirements caused delays of up to 2.5 hours to cross the international bridge. In response to threats to capture U.S. agents, U.S. Customs temporarily closed nine smaller ports of entry, such as Antelope Wells, New Mexico, in order to protect U.S. officials staffing these facilities. Finally, due to "miscommunication", the El Paso-Cd. Juarez port of entry was closed for a period of time on Saturday, February 16. These events severely restricted the flow of non-commercial vehicular traffic through the port of entry for approximately a two-week period.

Source: U.S. Department of Transportation, Contract No. DTRS 5683-C-0040, pp. 14-17.

U.S. Operating Authorities For Foreign Motor Carriers: Effective July 1, 1985

(MORATORIUM IN EFFECT)

Type of ICC Operating Authority	State of Operating Authority	Zone of Operating Authority	
		Commercial Zone	Interstate Commerce
License	Licensed	For Hire: Common, Contract (Mexican and U.S.) Type of Products: Non Exempt Exempt	For Hire: Common, Contract (Mexican and U.S.) Type of Products: Non Exempt Exempt
	Not Licensed	CANNOT PASS THROUGH THE PORT OF ENTRY UNLESS CERTIFIED	
		For Hire: Common, Contract (Mexican) Type of Products: Exempt Only	For Hire: Common, Contract (U.S.) Type of Products: Exempt Only
Certificate	Certified	For Hire: Exempt Private (Mexican) Type of Product: Exempt Non Exempt	For Hire: Exempt Private (U.S.) Type of Product: Exempt Non Exempt
	Not Certified	CANNOT PASS THROUGH THE PORT OF ENTRY	

SOURCE: Department of Marketing, University of Texas at El Paso
El Paso Foreign Trade Association

EXHIBIT 2

EXHIBIT 3: BORDER TRANSPORTATION SYSTEM
MAJOR CARRIERS OF NON-EXEMPT PRODUCTS BY MARKET

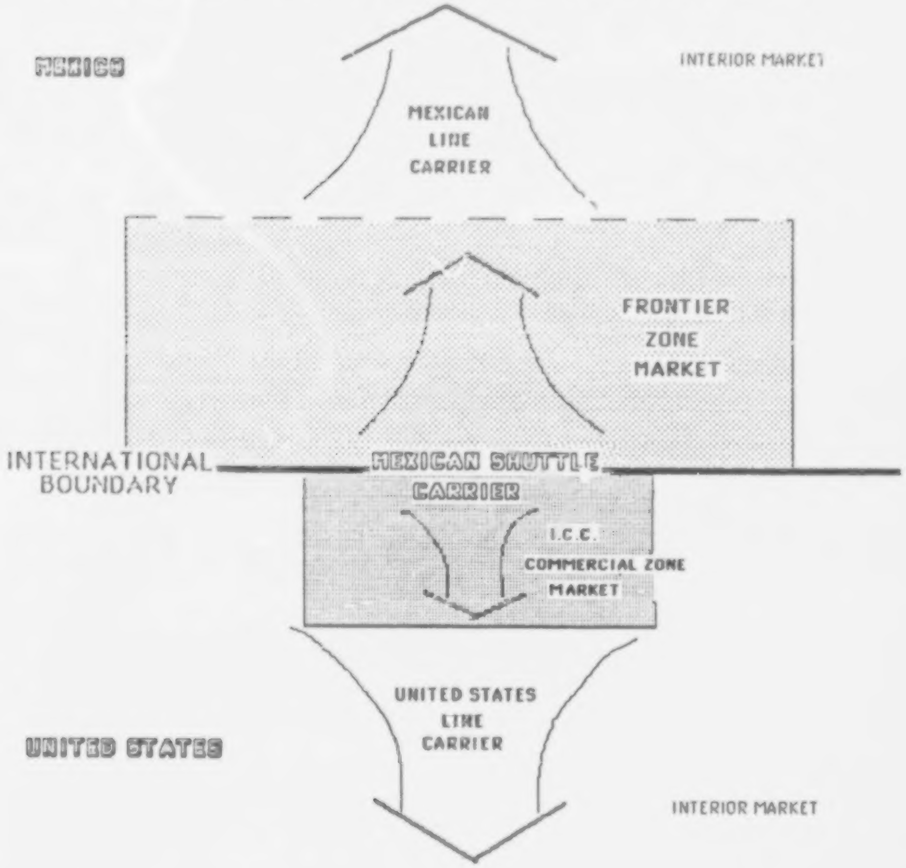


EXHIBIT 4: BORDER TRANSPORTATION SYSTEM
MAJOR CARRIERS OF EXEMPT PRODUCTS BY MARKET

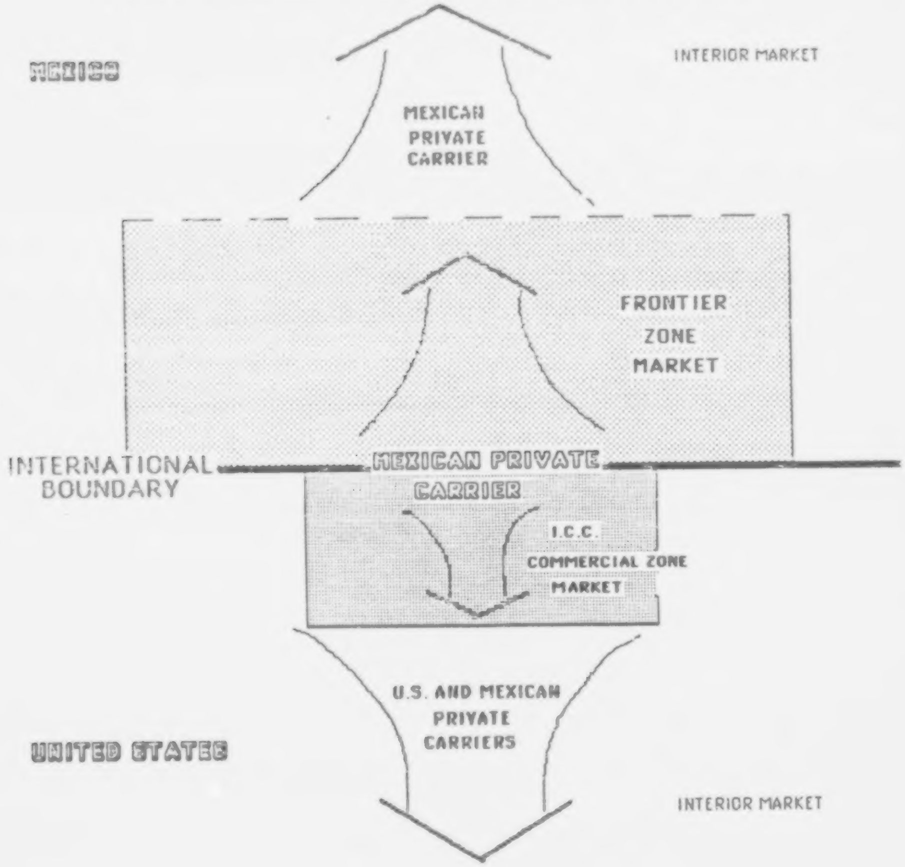
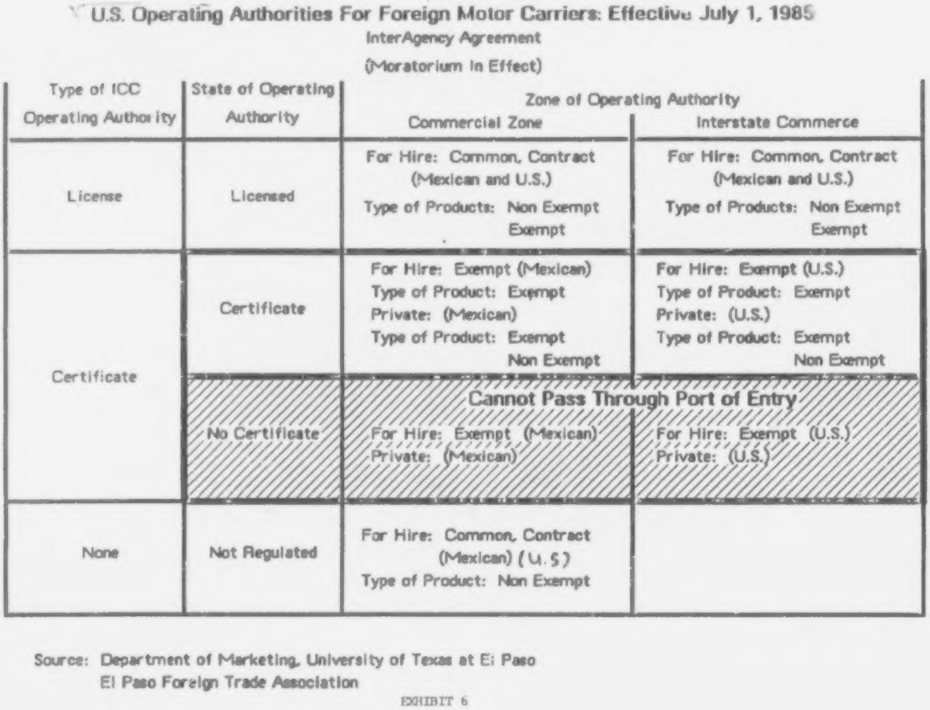


Exhibit 5.—Importance of Five Categories of Transportation Problems in the El Paso-Cd. Juarez Port of Entry (Points assigned out of 100)

Category:	*Mean Point Scale*
Physical Plant	27.1
Port Administration	41.3
Transportation and Business Support Activity	7.2
Business Communication	11.7
Bicultural Differences	13.2
Totals do not equal 100 due to rounding [1]	100.5

[1] Source: U.S. Department of Transportation, Contract No. DTRS 56830C-00040, p. 50.



U.S. Operating Authorities For Foreign Motor Carriers: Effective July 1, 1985

InterAgency Agreement

(Moratorium In Effect)

Type of ICC Operating Authority	State of Operating Authority	Zone of Operating Authority	
		Commercial Zone	Interstate Commerce
License	Licensed	For Hire: Common, Contract (Mexican and U.S.) Type of Products: Non Exempt Exempt	For Hire: Common, Contract (Mexican and U.S.) Type of Products: Non Exempt Exempt
Certificate	Certificate	For Hire: Exempt (Mexican) Type of Product: Exempt Private: (Mexican) Type of Product: Exempt Non Exempt	For Hire: Exempt (U.S.) Type of Product: Exempt Private: (U.S.) Type of Product: Exempt Non Exempt
	No Certificate	Cannot Pass Through Port of Entry For Hire: Exempt (Mexican) Private: (Mexican)	For Hire: Exempt (U.S.) Private: (U.S.)
None	Not Regulated	For Hire: Common, Contract (Mexican) (U.S) Type of Product: Non Exempt	

Source: Department of Marketing, University of Texas at El Paso
El Paso Foreign Trade Association

EXHIBIT 6

[The following information was subsequently received for the record:]

THE UNIVERSITY OF TEXAS AT EL PASO,
El Paso, TX, November 15, 1985.

Senator BOB PACKWOOD,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate the opportunity to respond to your questions and to help clarify the transportation issue that affects U.S.-Mexico Border Commerce.

A solution must be found to our cross-border transportation issue. The growth and expansion of U.S.-Mexico commerce, particularly The Maquiladora industry, have made cross-border transportation a national concern for both nations. As previous testimony has stated, a border transportation crisis could jeopardize the Maquila related jobs of more than one million American and more than two hundred fifty thousand Mexican workers—within two weeks of a crisis. The solution is effective transportation, not punitive action against Mexico for a lack of reciprocity. Our decision to admit Mexican Truckers into the U.S. interior was our decision. Their decision to restrict access of U.S. Truckers beyond the border commercial zone was theirs.

RESPONSE TO QUESTION NO. 1

The present cross-border transportation system (between border commercial zones) is effective. Unfortunately, the "system" is implemented differently depending on the border community involved (see attachment). Each community (a trade area consisting of the U.S. and Mexican urban center) has reached an accommodation based on its unique cross border, inter-urban needs. For example, the Brownsville-Matamoros community depends on the Mexican shuttle carrier to provide almost all of the cross/border transportation of commercial goods. A few Maquila plants provide their own service. In the Laredo-Nuevo Laredo community American carriers haul southbound commerce (backhaul empty) and Mexican carriers haul northbound (backhaul empty). In Presidio-Piedras Negras, U.S. carriers provide all the cross-border transportation. In El Paso-Cd. Juarez traffic is mixed with the Mexican shuttle carrier dominant. Finally, in Nogales-Nogales no American carriers operate on the Mexican side. To state it simply, the border communities have reached accommodations fostering the effective flow of commerce.

Why have most of these accommodations excluded American carriers from providing cross-border service? Basically, the reasons are three. First, the border U.S. Trucker's attitude is to not provide service to Mexican communities. Interviews with more than thirty U.S. Trucking managers demonstrated that none, except for Laredo and Presidio, desired that business. These managers cited the barriers (see September 20 Testimony, p. 8) to operating in Mexican border communities that include road conditions, traffic congestion, lack of emergency and repair services, damage to equipment, narrow streets, language, mordida, harassment by police and unions and the tying up of equipment for extended periods of time (minimum four hours in El Paso-Cd. Juarez). These barriers combine to make service to Mexico undesirable.

Second, U.S. carrier service to Mexico is unprofitable. U.S. carriers are not price competitive. Previous testimony stated: "As evidence of a lack of prior competitiveness, a U.S. carrier would have to charge 60–80 per haul. The Mexican Line Carrier would have to charge at least $130 dollars. But Mexican shuttle carriers' charges range between $15 and $55 dollars per haul." (See September 20, Testimony, p. 8).

An interview with Mr. Rudy Miles Jr., President, Miles Transportation Company, El Paso, Texas provided the following price data. Mr. Miles stated that his minimum charge would be $140 dollars to drop/pick up 45,000 pound trailers on a round trip haul El Paso to Cd. Juarez and return. He figures his driver and equipment charges at $35.00 per hour and that the average round trip tallies four hours. And, the $140 price is quoted to high volume customers only. The price to occasional customers i.e., low volume, would be approximately $220 dollars or $55 per hour. In contrast, he maintains that the Mexican shuttle carrier can provide the identical service for $85 or less. Except for unique situations, U.S. carriers are simply not competitive in providing cross-border transportation.

Finally, the Mexican system of concessions and mordida influences who provides cross border transportation. Concessions influence the transportation system in two ways. A transportation concession gives the holder the exclusive right to provide the service. For instance, in Matamoros, two entities control the transportation concession. U.S. carriers desiring entry have been permitted access provided a "Phantom Driver" fee is paid. The P.D. fee is the charge the U.S. carrier pays for the services of a Mexican driver although no driver is provided. In Nogales, no U.S. carriers operate due to the monopoly (concession) held by the Olaiz family. The second concession is the stevadore concession that operates within the customs lost of the Mexican Aduana. That concession gives the union the right to control the movement of commerce within the lot. Again, accommodations can permit U.S. carriers to operate.

In conclusion, it simply is not practical for U.S. carriers to compete in Mexican border communities. The significant barriers are attitudinal and economic. As one trucker said "Given the barriers, its only those who lack an understanding of the freight business who favor entry into Mexico".

RESPONSE TO QUESTION NO. 2

Congress must adopt a policy based on effective cross-border transportation of commercial goods and services. The Motor Carrier Safety Act of 1984 was used blatently as a political and punitive tool against Mexico. As evidence of this, review ambassador Gavin's letter (see attachment).

Three considerations are important to an effective cross boarder transportation policy. First, the objective should be to keep the traffic flowing. Traffic interruptions affect jobs in the U.S. and Mexico. Certification and reasonable standards for safety and financial responsibility, registration and user fees and access restrictions will not disrupt the system. Disruption will occur if you attempt to use the system for philosophical or political statements.

Second, our policy should be to legislate an enforcement mechanism that will exclude Mexican carriers from service beyond the border commercial zone.

At present, these carriers dominate the commercial route between Calexico and los Angeles, California and carry significant commerce between Laredo and Dallas or Houston, Texas. We need a provision to seek the cooperation of federal, state and local authorities to prevent these violations of U.S. Law. These trucks should be stopped and impounded by U.S. Border Patrol, DOT, ICC, State Safety and Enforcement, and local Enforcement Officials. Stiff financial penalties should be imposed on a) occasional violators to reclaim their equipment and b) frequent violators to reclaim their equipment and to have their operating certificate reinstated.

The third consideration is the safety of foreign motor carriers. Under the provisions of MCSA (1984) the border communities are not protected because the "Intra City Exemption" exempts Mexican carriers from U.S. safety standards. If the exemption were lifted, and stricter U.S. safety standards were promulgated, most Mexican carriers could not comply due to the expenses associated with retrofitting foreign manufactured trucks. These expenses have been estimated to range between $1,200-5,000 per vehicle. The result would be another transportation crisis on the border that would have detrimental effects on the national economy and on U.S.-Mexican relations.

The solution to safety is to implement realistic safety standards. To repeat we have none now. A roadworthiness standard for safety would protect the public and permit Mexican carriers to operate within U.S. border communities. DOT's position that a roadworthiness standard creates a double standard is untenable. We have a double standard today with no safety provisions and no enforcement of access to the interior of the U.S. Although a double standard, roadworthiness would be restricted to border enclaves minimizing access to highways and prohibiting access beyond the commercial zone. Further, the standard would recognize the basic differences in equipment, and access to equipment, that exist between U.S. and Mexican carriers.

The proposed bill, the Motor Carrier Registration Act of 1985 accommplished the basic goal of achieving effective cross-border transportation. It clarifies and resolves some of the definitional problems found in MCSA (1984). It minimizes discrimination by requiring the registration of all commercial carriers (10,000 pounds plus), not select carriers. It addresses safety and financial responsibility. Finally, it must be amended to add an enforcement provision that will preclude the access of Mexican carriers beyond the border commercial zone.

The MCRA (1985) is the solution to the problem. It should be passed into law.

Sincerely,

Donald Michie,
Department Chairman.

Mr. **Vale**. Mr. Chairman, Senator Exon: Thank you for allowing us to testify.

I am president of the Mexico-Texas Bridge Owners Association, which represents 11 ports of entry between El Paso and Brownsville, 7 of which are political subdivisions of the State of Texas and 4 of which are private corporations.

I am also speaking on behalf of the Rio Grande Valley Chamber of Commerce, for which I serve as vice-president, which covers the four counties at issue over the new expanded commercial zone in south Texas.

The reason you did not know about what was happening with this legislation, Senator, is that section 226 was an 11th hour amendment. That is why there was no testimony on it.

Senator **Packwood**. It came in the House. We did not offer it. It was put in in the House. I do not know what kind of testimony they had, but we knew nothing about it.

Mr. **Vale**. Neither did we.

We are very opposed to the Motor Carrier Safety Act of 1984 in its present form. We favor the intent of that legislation, which is not to allow unfair competition by Mexican trucks haulings into the interior of the United States. But we very definitely need them to access the border areas quickly and efficiently.

The Interstate Commerce Commission has attempted to define commercial zones using historical data and, quite frankly, they just do not fit the existing economic circumstances along the border. For example, their mechanism to change zones is very cumbersome.

For 6 months now and at a cost in excess of $25,000, we have not been able to get our commercial zone expanded, and I do not think it is fair for U.S. citizens to have to spend this amount of money in order to prove a reality that exists on the border today.

For example, if our commercial zone petition is not approved, we are going to have 30 of 33 grain elevators that export to Mexico outside the commercial zone, they cannot export American goods. We are going to have 60-some odd produce sheds out of 80-some odd produce sheds that cannot receive produce from Mexico, which I think we all appreciate having our melons when they are out of season and a few other things that we like to have in our homes. This costs American jobs.

In addition to that, approximately 90 percent of the land area of the counties along the border will be unaccessible to Mexican trucks, and this—we can understand not accessing Dallas, Houston, or New York, but it seems ridiculous that we cannot get them right there on the border.

Roads also do not follow very neat little patterns, and sometimes the definitions that they use will not allow a truck to get to it. You might be 1 mile within the zone, but it may take you 10 miles to get to that spot.

They also have some very different definitions. For example, in a community of 2,500 to 25,000 the ICC defines a commercial zone as the city limits plus 4 miles, while the Department of Transportation defines it as the city limits plus 3 miles.

How do you expect a Mexican to know that? How do you expect an American trucker to know that? I do not think the people charged with regulating this would be able to know where those lines are.

The annual proof of insurance, as you heard Mr. Barnhart discuss, it is very difficult for an American trucker today to get them. Some of their premiums have gone from $10,000 to $50,000. How are we going to be able to get Mexicans to get annual insurance?

What you are doing is you are setting it up whereby—the Motor Carrier Safety Act sets it up whereby those very wealthy, very powerful trucking interests in Mexico will be the only ones able to get insurance, because they can pay the premium, and they are essentially going to be able to hold commerce at ransom any time they decide to get together over lunch and decide what they are going to do and what they are going to charge.

And I think these are some very serious issues that we need to look at.

Regarding losses, we checked all of the insurance agents in the valley, which cover a substantial amount of trucks coming in, and we found that they had from 0 to 19 percent loss on the premiums. That is pretty good business. The insurance industry would not be in trouble if that is the way all of their premiums went.

So we feel very confident that the insurance provisions are not necessary on an annual basis. A truck is a truck is a truck, and if it is insured while it is here that covers and protects us as much as we need.

Now, regarding safety standards, we feel that you do not need to have U.S. manufacturing standards—we want safety standards. We live there. My children are traveling the same streets. I certainly do not want unsafe trucks on the road.

But we are not talking about the same type of hauls that you are talking about when you set up safety standards in the United States. These are met by the manufacturer; they are not met by a trucker. They are made that way, and the standards are such that they are already in place. The trucker does not have to do anything but maintain his equipment.

We are talking about short hauls, 30, 40, 50 miles. We are not talking long haul over-the-road movements that require very strict analysis of the condition of the vehicles. So it is a totally different type of move.

We also have a considerable amount of concern with the fact of the so-called urban exemption, whereby a truck if it originates on the Mexican side of the river right close to us has one very lenient set of safety standards, and if it originates in the interior 100 miles away it has a completely different set of safety standards. I do not think that is fair.

I think if it is a truck, if it is fit, willing and able and it can do the job, it should meet the same requirements and the same standards as any other truck coming from that country.

And we strongly urge the adoption of Senator Gramm's proposed safety standards. We also have a problem in how are you going to get a certificate of registration to come in? It has got to be filed in English, it has got to be filed in Washington, DC. It has to have a Department of Transportation safety rating. It has to—let us say, you have to certify you are not going to travel over 5,000 miles in the commercial zone or you are going to pay taxes.

I ask you, Senators, with your knowledge of John Q. Troquero in southern Mexico, do you really think he is going to be able to fill this out and file it? It is just a guise to keep him from coming into this country. It is nothing more than that.

Let me point out to you that if we cannot get quick, responsive certificates of registration that is called for by the act, we are hurting ourselves.

We lobbied in Mexico for several years to allow American producers of grain to sell directly to Mexican consumers. We got a presidential decree in March of this year. In less than 30 days—and it takes over 30 days to get a certificate of registration—those trucks were rolling up to the elevators. Those trucks were loading grain in 3,000 and 4,000 and 5,000 ton lots. And not a single document was changed hands other than money.

So it was in those trucks that we exported $17 million worth of grain in 2½ months—and we did not have any grain to sell. I have got people right now that want to bring it in from all over the Midwest so that we can bring it in to Mexican trucks that can access the northern border region of Mexico most efficiently.

Senator Packwood. I have to ask you to conclude, Mr. Vale.

Mr. VALE. Finally, I would like to say that reciprocity exists. I am a bridge owner myself. We have U.S. bus service, daily bus service to Monterey from the valley. We have 20 minutes bus services across the river. We have Mexican buses coming into the United States, we have American trucks going to Mexico.

It is a problem only for people who do not want to go down there and figure out how to do it.

Thank you, sir.

[The statement follows:]

STATEMENT OF SAMUEL FRANKLIN VALE, PRESIDENT, MEXICO TEXAS BRIDGE OWNERS ASSOCIATION, VICE-PRESIDENT, RIO GRANDE VALLEY CHAMBER OF COMMERCE

Mr. Chairman and Members of the Committee, my name is Samuel Franklin Vale, I am presently serving as president of the Mexico-Texas Bridge Owners Association, representing all non-federally owned border crossing points, including all principal commercial ports of entry along the Mexico-Texas border. I am also here today to testify in behalf of the Rio Grande Valley Chamber of Commerce of which I presently serve as vice-president and we represent the four southernmost counties in the State of Texas. In my personal businesses, we operate the Starr-Camargo Bridge Company which is a bridge port of entry; Border Pacific Railroad Company which is a short line railroad and Beta Group, Inc. which is a transshipping and international trading company. We have a close working relationship and international trading company. We have a close working relationship with Customs Brokers, freight forwarders and truckers. Thank you for allowing me to be here to discuss this most important issue. We are encouraged by the fact that Sen. Gramm has been working closely with his colleagues in both the Senate and the House in a bipartisan fashion hoping to alleviate the problems that were created by the unfortunate enactment of Legislation that had not fully taken into consideration the consequences to all the citizens of the United States.

We are opposed to the Motor Carrier Safety Act of 1984 in its present form. We are in favor of the intent of that legislation, specifically that Mexican truckers not be allowed to compete unfairly with U.S. carriers by hauling goods into the interior of the United States. However, it is essential to the economic survival of the border region that counties adjacent to the Mexican border be eligible to originate and receive truck cargoes from the Republic of Mexico with relative ease and speed. We find four basic problem areas with the Motor Carrier Safety Act of 1984: 1) the geographical limits of the commercial zones as defined; 2) the insurance requirements as set out; 3) the imposition of Department of Transportation Safety Standards; 4) the nature of the process for obtaining and renewing an annual certificate of registration.

The Interstate Commerce Commission has attempted to define commercial zones with historical data which simply does not apply to the existing economic conditions today along the Mexican border and does not have a responsive mechanism to implement changes to commercial zones necessitated by circumstances. For example, at the present time, the lower Rio Grande Valley of Texas has joined together under the umbrella of the Rio Grande Valley Trucking Coalition which is an association of political entities, trade and civic groups to petition for enlargement of our commercial zones as defined by the 1984 Act. We have spent over $25,000 to date and have not received the expansion as requested. If our petition for an expended commercial zone is not approved, three very quick negative results become apparent: 1) of 33 grain elevators located in the four counties of the Rio Grande Valley, only three fall within a commercial zone as defined by the 1984 Act, meaning that 30 would not be able to export to Mexico via Mexican trucks, the only viable way of exporting grain from our area to Mexico; 2) the Rio Grande Valley has some 84 companies that receive mexican produce and 68 of these are located outside of the commercial zones as defined, meaning that those companies can no longer handle mexican produce which is critical to providing revenues and jobs during that time of year when similar goods are not produced and packed in the United States; 3) new twin plants will not be available to 90% of the land area of the counties located along the mexican border. Another problem with the commercial zone is that while the ICC and the DOT are involved in a regulatory capacity under the existing law, their respective geographic definitions of a commercial zone are incompatible. For example, a community of 2,500-25,000 population, the ICC defines the commercial zone as the city limits plus four miles, while the DOT defines it as the city limits plus three miles.

Consider the problems of the Mexican trucker in his attempt to understand how he is to comply with the act and distinguish whether he is physically operating within or outside of the respective zone limits. Indeed we doubt seriously that many U.S. truckers or those charged with enforcing the law would be able to draw clear definitive lines based on the existing formula.

The annual proof of financial responsibility as required by the certificate of registration process under present law is not economically practical or necessary to protect U.S. property or people traveling the public highways. Trip insurance, lasting and in force for the time the mexican truck is in the U.S. is all that is needed. The 1984 Act will concentrate international traffic in the hands of a few, essentially giving these Mexican truckers the power to hold border commerce at ransom because smaller more flexible independent carriers will be unable to finance annual insurance premiums. Ultimately, the U.S. taxpayer pays this bill. The ICC advices the reason they are requiring an annual proof of insurance, is because it's easier for the bureaucratic system to keep track of those Mexican trucks operating within a commercial zone. This position really miffs us because the DOT on the other hand *does accept* the trip insurance and in fact is bound by federal court order to do so.

Regarding safety standards, the ICC has provided us with an additional mystery in that it has determined that there will be a different set of safety standards for trucks originating in mexican communities adjacent to the U.S. commercial zone, as opposed to those trucks which may originate at the interior points in Mexico. It would seem to us that a truck is a truck and if it is fit, willing and able to do the work for which it was designed, it should have to comply with the same standards as all other trucks from that country. This is the so-called urban exemption and quite frankly we are not aware of the authority of the ICC to define safety standards for commercial zones in a foreign country. We strongly urge the adoption of the safety standards for foreign motor carriers as set forth in Senator Gramm's proposed legislation. This is specially the case as both the ICC and the DOT confirm that further requirements as to safety standards will in fact be forthcoming. In effort, the law gives these agencies Carte Blanche on imposing whatever regulations they deem appropriate, without regard to the economic consequences of their actions. We therefore have grave concern as to the potential for overzealous and unrealistic regulations regarding equipment safety standards. It should be remembered that the movements of concern here are essentially short haul, pick-up and delivery services within relatively close proximity to the border and not long distance over-the-road movements. DOT safety standards as to equipment, are standards that are imposed upon the manufacturer of the transportation equipment. In reality, insofar as "road worthiness," a mexican tire or headlight may adequately serve its intended purpose and be "safe for use" but not exactly fit DOT's standards for U.S. equipment used in long haul transportation. The cost of compliance with DOT equipment standards per se could result in no transportation service being available. If standards are to be imposed, such should be based upon road worthiness as is defined in Sen. Gramm's legislation, using the concept of fit, willing and able at the time the vehicle is operating in the United States and for the type of service being provided and not on highly detailed and complex specifications required of the manufacturer of such equipment.

Probably one of the greatest concerns that we have along the border are problems associated with the certificate of registration application procedures. In short, these procedures are not responsive to shippers needs, be they importers or exporters. A brief review of the application requirements will demonstrate the impracticality of the announced procedures. The certificate of registration must be applied for in english only; it takes a minimum of 30 days to process; it needs proof of financial responsibility in the form of an annual insurance policy; it requires a DOT safety rating; the safety rules are unclear, specially as to the so-called urban exemption discussed previously; the certificate can only be applied for in Washington, D.C.; and the mexican truck owner must certify that he will not travel more than 5,000 miles in the U.S. commercial zone or have to pay U.S. highway taxes. Senators, I ask you with your knowledge of Mexico, do you anticipate that Juan Q. Troquero in Apatzingan, Michoacan would have the ability to complete an application form as set out by the ICC and receive his certificate of registration within a reasonable time frame?

The announced procedures presume that shippers and truckers have at least 30 to 60 days lead time. When U.S. importers of agricultural products make their deals, often before planting begins, they have no idea of the market at harvest time and therefore the number of trucks that would be required. Keep in mind that while we are importing mexican produce, at the same time, it is being distributed throughout the mexican national market drawing from the same pool of trucks used for export. Traditionally, mexican trucks are hired on an as needed basis, with only a few hours to a few days lead time to prepare. Each truck may make as few as one to as many as ten trips north to the U.S. border, depending on market forces and demand for trucks. Under these circumstances, it would take years for mexican truckers to become used to the certificate of registration application procedures which are by the way subject to change annually at the whim of the ICC. Such a system would discourage truckers from competing for this type of freight, this in turn drives cost up to shippers and ultimately to the U.S. consumers which already pay a premium for fresh out of season fruits and vegetables.

Similarly, exporters of U.S. grains by truck would be unable to predict their trucking needs. After several years of lobbying in the Republic of Mexico, U.S. grain exporters were successful in changing the system for importing feed grains from the previous practice allowing a government agency, Conasupo, to be the only buyer, to one that permits the mexican consumers to purchase directly from U.S. producers. The trucks used to deliver these goods would require certificates of registration in order to come in to the U.S. commercial zone to pick up the grain. Well gentlemen, anybody who is familiar with grain sales understands that deals are made on short notice and trucks are brought from all over the Republic of Mexico for short periods of time to pick up grain at U.S. elevators along the border. It is impossible for a trucker or a grain elevator to know in advance if they will be in need of a specific number of trucks on any given day. In fact, most mexican truckers, do not even know until they report for work whether they will be hauling for mexican national producers or U.S. exporters. Exporters are dealing in a very volatile market with large amounts of money at stake. If mexican trucking unions can not draw from the entire national grain trucking fleet, many deals will die for lack of transportation at the time it is needed. The potential for this crop is staggering. With two weeks notice and over a period of 2½ months from mid-April through June, 1985, with virtually no sorghum available in our domestic border elevators, U.S. producers exported in excess of 308,644,000 lbs. of grain valued over $17,000,000 at two ports of entry in the Rio Grande Valley. It was less than 30 days from the day the decree came down allowing the goods to be sold directly to mexican consumers to the day the first truck rolled up to the elevator. Certainly, if Valley grain producers had to comply with the law that went into effect July 1, 1985, these $17,000,000 worth of exports would not have taken place. With a potential export season of six to nine months annually, the amount of dollars that we could loose from our export earnings is staggering. The Rio Grande Valley of Texas alone has over half million acres of grain production. The availability of trucks to sell their products to consumers three to six hours away is essential if valley grain farmers are going to be able to survive and expand their production. To be responsive to shippers needs, certificates of registrations need to be issuable at the border, immediately upon providing proof of compliance with reasonable safety standards and insurance coverage.

We urge you to support S. B. 1252 as it clarifies the Motor Carrier Safety Act of 1984 by providing rules and procedures more responsive to the needs of international commerce along the United States-Mexican border.

Thank you.

MEXICO-TEXAS BRIDGE OWNERS ASSOCIATION,
November 12, 1985.

Hon. BOB PACKWOOD,
U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR SENATOR PACKWOOD: We welcome the opportunity to provide you with supplemental information requested in your correspondence of October 28, 1985. In response to your question No. 1 we offer the following: While the establishment of a commercial zone in the four southernmost counties of the State of Texas, would to a great extent eliminate the major obstacle to a fluid and unimpeded flow of commerce by motor carrier between the U.S. and Mexico, it nevertheless would not totally cure the problems created by the Motor Carrier Safety Act of 1984. With establishment of the proposed commercial zone it would at least be theoretically possible for Mexican transportation vehicles to enter into this area for transshipping into American carriers. We would still have problems to be worked out with the Department of Transportation's Bureau of Motor Carrier Safety in that their definition of a commercial zone is significantly different from the ICC's and in fact we have been adviced that the BMCS does not recognize ICC commercial zones subsequent to October of 1975. What this means is that the safety regulations enforced by the BMCS would have a different commercial zone than would the economic zone established by the ICC. This matter we hope can be addressed in the near future. An additional concern of ours would be the procedures for securing a certificate of registration in that they are too cumbersome for the average Mexican trucker to comply with at the present time. We feel that the certificate of registration should be issuable at the border possibly by United States customs working in conjunction with customs brokers, on the spot, with limited durations up to 1 year. We feel the certificate of registration should be issuable parallel to the insurance coverage secured by the carrier. For example, if the carrier secures annual insurance coverage then he could be issued an annual certificate of registration. However, should he secure 24 hour or 30 day or 90 day insurance then the certificate of registration should be issuable only for the duration of the vehicular liability insurance. My testimony points out some of the problems we have with the certificate of registration procedure, one of these would also be the Department of Transportation safety rating that would be required. And of course as we pointed out, we have problems with the requirement that annual insurance be required when many of the vehicles entering the United States would only have limited need for insurance and on an annual basis may not be in the United States more than 5 or 6 days total.

As to your question No. 2 we offer the following: We feel that there would be no underminding of the safety requirements if the safety roadworthiness standard were used for commercial zones along the Mexican border. This would mean that only short hauls into a very limited area of the border would be permitted and would not be allowed for those long haul over the road shipments for which our standards were initially drafted. We live along the border and are very familiar with the type of vehicles that would traverse our streets and highways and to date we find a better safety record on short hauls into the border area by Mexican trucks than you can find with local freight carriers transporting between one point to another along the border.

If you have any additional questions please do not hesitate to contact us and we are looking forward to working with you and your committee on refining motor carrier regulatory issues.

Sincerely,

S.F. VALE, *President*.

Senator PACKWOOD. Mr. Sollner.

Mr. SOLLNER. Thank you, Senator Packwood. I will try to make up for Sam's "unemotional" testimony today.

Thank you for allowing me to come in and have the opportunity to support Senator Gramm's legislation which attacks the basic problems we have, particularly in the valley, with the MCSA of 1984.

My name is Gary Sollner. I am an operations manager of a maquila or twin plant operation in Reynosa-Tamaulipas, Mexico. This plant is part of the Zenith Electronics Corp., headquartered in Glenvies, IL.

I am here representing the Reynosa Maquila Association, which is a compilation of about 20 plants representing 17 different U.S. corporations, including General Electric, Zenith, General Motors, and TRW, as well as some smaller ones.

I am also here as the chairman of the Rio Grande Valley Trucking Coalition, which was formulated in the latter part of March of this year to address the concerns and issues that the Motor Carrier Safety Act of 1984, and more particularly section 226, presented to the valley as an economic entity.

I would like to talk a little bit about and share with everybody what a maquila or twin plant operation is, so hopefully everybody will understand how trucking and these regulations affect this business. A twin plant is generally a manufacturing operation that is located on the border, but also we have plants in the interior of the country of Mexico.

Our corporate headquarters are usually in the United States, although maquilas are not exclusively U.S. operations. We bring raw materials in, both U.S. and foreign materials in bond.

Assemblies are fabricated, in some cases final products. These in turn are returned to the United States. None of the materials brought in are left or consumed in Mexico. In most cases, final assembly work and additional work is done in the United States to turn out a final product.

There are many companies represented in the maquila or twin plant operations in Mexico, and I have mentioned some and Don Hagans has mentioned some.

Now, what I want to do is relate section 226 with some of the particular concerns that the members of this group have and which Senator Gramm has presented at the beginning of the session.

When we first found out about this act and that it was going to be implemented July 1 of this year, we were particularly concerned as maquila operations in that the interpretation, as Don pointed out, by the Department of Transportation and our Ambassador, Mr. Gavin, to Mexico, precluded the Mexican for-hire carrier of nonexempt goods. This is the primary type of carrier that the twin plants employ, to move their finished goods or product right across the border for U.S. truckers to pick up and haul north, as well as having U.S. truckers bring in raw materials, in our case, the Rio Grande Valley, where the Mexican leased trucker picks up those raw materials and brings them across the river to our plants.

You can imagine the near panic that we found ourselves in, because that would literally have shut down most of the vast majority of our maquila/twin plant operations in Mexico with the before-described million, to million and a half jobs directly lost as a result of these operations shutting down.

Through an interagency interpretation of the law, which is somewhat ambiguous in this case, this type of carrier was then pronounced to be exonerated from a certificate of registration. However, we understand that they still have to comply with all of the rules and regulations that go along with receiving a certificate of registration, and many of those regulations still are not fully understood or comprehended. This continues to be a source of concern for the twin plant operations.

The other major area that I would like to comment on, after talking about what rules do you have to comply with to get into a zone—a commercial zone, a port of entry area, an area in which you can function—is that area large enough to accommodate the economic necessities of the area you are working in?

What I would like to point out is that there are many large maquila plants down in the Rio Grande Valley, and there are often needs to transfer materials between plants. There is a need to centralize materials coming down, exchange the trailers with other tractors, pull those materials off. With the current definition of the commercial zone, many of the maquila operations are indeed in big trouble if these are fully enforced.

For instance, many of the plants utilize warehouses in Harlingen, Texas, which is a central city between Reynosa, McAllen, and Matamoros/Brownsville on the other end of the valley. Harlingen is completely outside of the currently defined commercial zone, which could necessitate the movement of warehouses, facilities, or exchanging of tractors two or three times to accomplish the same purpose.

Many of the companies like to have their suppliers close to their large plant operations, and vendors are being encouraged to move to the valley for this very purpose. The commercial zones in our opinion create an undue hardship on vendors trying to locate throughout the valley to support these operations, which are 60 miles apart, these two enclaves of maquila operations.

The way the commercial zone is defined, it is going to create a lot of hardships, a lot of extra handling, a lot of extra costs, which in the end analysis will be passed on to the U.S. consumer, as many costs in relation to the produce people would be passed on.

I would like to make one other tie with the agricultural people. I have a letter from a trucking firm in Chicago. They send trucks down with our raw materials. They depend on the produce that comes across, to haul these kinds of commodities back up north, to make these economic hauls so there is no deadheading. This economy really is tied together, industry and the produce people.

Thank you.

[The statement follows:]

STATEMENT OF GARY SOLLNER, PRESIDENT, REYNOSA MAQUILA ASSOCIATION AND CHAIRMAN, RIO GRANDE VALLEY TRUCKING COALITION

My name is Gary Sollner. I am the Operations Manager of what is known as a "maquila" or twin plant that is owned by Zenith Electronics Corporation and located in Tamaulipas, Mexico. I am also the President of the Reynosa Maquila Association which is composed of the various United States owned maquila entities located in Reynosa, and the Chairman of the Rio Grande Valley Trucking Coalition which was organized as a direct response to the enactment of the "Foreign Carrier" Section 226 Certificate of Registration Provisions of the Motor Carrier Safety Act of 1984.

I appreciate the opportunity to appear here today, Mr. Chairman, to state my views. I am strongly in favor of enactment of the Bill presently before this Subcommittee which is entitled "The Foreign Motor Carrier Registration Act of 1985." The Bill clarifies several ambiguous provisions contained in Section 226, and fills certain very obvious legal voids that still exist, notwithstanding the rules issued by the Interstate Commerce Commission to supplement and amplify the prior legislation.

Several other witnesses have appeared before the Subcommittee today from the Rio Grande Valley and West Texas who have a particular expertise in different areas. Rather than duplicate other testimony, I will concentrate on that area in which I have had the greatest involvement, the maquila or twin plant industry. My comments will relate to the following:

Background information regarding the maquila industry;

Concerns of the maquila industry immediately following enactment of the Motor Carrier Safety Act of 1984;

Importance of clarification regarding crossing of Mexican for-hire carriers that transport non-exempt items;

Importance of use of "safety roadworthiness" standards as set out in the Bill as opposed to "safety fitness" standards for foreign commercial vehicles;

Importance of utilizing "ports of entry" as set out in the Bill as opposed to "commercial zones" for foreign commercial vehicle operation; and

Importance of trip insurance and streamlined registration procedures.

BACKGROUND INFORMATION REGARDING THE MAQUILA INDUSTRY

The maquila industry involves assembly of principally U.S. components by factories in Mexico. These factories can be located throughout Mexico, except for the federal district. Both foreign and U.S. components are shipped "in bond" into Mexico, assembled utilizing Mexican labor and then returned to the U.S. Duty is essentially paid on only the "value added" in accordance with items 806.30 and 807.00 of the Tariff Schedule of the United States. In recent years additional efforts have been made to use components of Mexican manufacture in order to achieve some percentage of Mexican integration, and to assist in the further development of the Mexican economy.

At present, there are well over 750 U.S. owned maquila plants located in Mexico employing in excess of 250,000 Mexican workers. Companies Substantially involved in the maquila production-sharing program include General Motors, General Electric, RCA, Ford, Chrysler, Ampex, AMF and a number of other well recognized U.S. manufacturers. Approximately $3.2 billion in maufactured and assembled items were transported into the U.S. from such plants in 1984. Best estimates indicate that approximately 90% of these items were transported into U.S. commercial zones by Mexican "for-hire" motor carriers. Best estimates also indicate that approximately 90% of these items were non-exempt as opposed to exempt. Informal surveys indicate that approximately 500,000 U.S. workers would be directly affected and an additional 500,000 U.S. workers would be indirectly affected if such non-exempt items did not cross the border.

CONCERNS OF THE MAQUILA INDUSTRY IMMEDIATELY FOLLOWING ENACTMENT OF THE MOTOR CARRIER SAFETY ACT OF 1984

In November, 1984, and following enactment of Section 226 of the Motor Carrier Safety Act of that year, the Department of State through the U.S. Ambassador to Mexico forwarded a memorandum prepared by the Department of Transportation to the Mexican government. That memorandum purported to interpret the various provisions of Section 226 requiring Certificates of Registration, and said:

"A strict interpretation indicates that for-hire carriers without ICC licenses (who at present can carry any kinds of cargoes into the commercial zones) will be restricted from July 1, 1985, (provided they obtain Certificates of Registration) to only carrying exempt cargoes from Mexico into the commercial zones in the United States."

Because the maquila industry principally ships non-exempt cargoes (items) through for-hire Mexican carriers, the Motor Carrier Safety Act, as then interpreted by the Department of Transportation, would have effectively gutted the ability of U.S. maquila companies to transport internationally by using Mexican carriers. This ban would have probably resulted in a reciprocal ban on the use of U.S. owned commercial vehicles by U.S. companies operating in Mexico. Quite obviously, a very significant number of jobs and a substantial loss to involved U.S. maquila companies would have resulted.

IMPORTANCE OF CLARIFICATION REGARDING CROSSING OF MEXICAN FOR-HIRE CARRIERS TRANSPORTING NON-EXEMPT ITEMS

In a strange about face, the Department of Transportation later notified the Interstate Commerce Commission, during the comment solicitation period of the rulemaking process, that the legislation did not change the ability of Mexican domiciled for-hire motor carriers to operate in border commercial zones. Importantly, an inconsistent interpretation of a somewhat ambiguous law now exists. The nature and scope of maquila involvement by U.S. companies is such that legislative clarification is of critical importance. What the Department of Transportation now says the legislation means is simply not what it initially said the legislation meant—an unacceptable situation.

If the original legislation was indeed intended to regulate cross-border traffic, it totally missed the mark. For-hire commercial vehicles transporting non-exempt items are now exempt from registration.

The Bill presently before this Subcommittee provides for regulation of all types of commercial cross-border trucking, and clarifies the right of Mexican for-hire carriers to transport non-exempt items.

IMPORTANCE OF USE OF "SAFETY ROADWORTHINESS" STANDARDS AS SET OUT IN THE BILL AS OPPOSED TO "SAFETY FITNESS" STANDARDS FOR FOREIGN COMMERCIAL VEHICLES

According to the Interstate Commerce Commission, and implicitly set forth under the provisions of Section 226, Mexican for-hire carriers of non-exempt items would be required to meet the "fit, willing, and able" standards of safety fitness—even though they would not be required to register. While this is an interesting anomaly, there will nevertheless be exposure on the part of commercial carriers transporting maquila items of safety standards that are more stringent than those presently existing in their own country. Although there was some possibility that an exemption would be available for such carriers under the "intra-city operations" exclusions presently contained in the Code of Federal Regulations, due to separate requests by the Interstate Commerce Commission, there is a very strong possibility that the exemption will be eliminated in the very near future, again placing foreign carriers in jeopardy of violating U.S. safety standards.

The Bill before this Subcommittee provides a standard of "safety roadworthiness" that would take into account protection of U.S. lives and property through application of appropriate safety standards, but would still consider the country of manufacture and practical economic realities of commercial vehicles operating in international commerce. If the original legislation is not modified in this regard, we would soon be facing a situation wherein the vast majority of Mexican commercial vehicles crossing the border, while legally entitled to cross, would nevertheless be prevented from crossing due to their inability to meet existing and anticipated U.S. safety standards.

IMPORTANCE OF UTILIZING "PORTS OF ENTRY" AS SET OUT IN THE BILL AS OPPOSED TO "COMMERCIAL ZONES" FOR FOREIGN COMMERCIAL VEHICLE OPERATION

The next area of importance relates to the definition of "commercial zones" utilized in the legislation and by the Department of Transportation. Due to the number of bridges in the Rio Grande Valley, and the size of existing municipalities, the commercial zones contemplated in the legislation would not be contiguous—making it illegal for commercial trucks to enter at one location and return through another, even though this may be the most economical route and one formerly permissible under U.S. law. It makes no sense to use municipality definitions that were originally intended for "commercial zones" located anywhere in the U.S., principally the interior. Frankly, existing "ports" and "ports of entry" presently administered by the Department of the Treasury (Customs Service) would be much more appropriate "zones" for commercial vehicle operation than the "commercial zones" described in the legislation.

The Bill before this Subcommittee alters the definition of the border areas in which Mexican for-hire vehicles can operate, substituting ports of entry for commercial zones. The ease of expanding and contracting these ports legally, where necessary, would be of substantial assistance as the maquila industry grows and additional U.S. border operations are added. As our associations have discovered, the process of changing the parameters of a municipal commercial zone is not only legally cumbersome but expensive. It is simply not the type of procedure that should be implemented in a border area wherein the U.S. has determined that its best interests are served by expanded trade and shared production facilities.

IMPORTANCE OF TRIP INSURANCE AND STREAMLINED REGISTRATION PROCEDURES

The Rio Grande Valley Trucking Coalition is concerned about several additional matters. These include the ability of particular carriers to obtain trip insurance (which was possible prior to the legislation) rather than a policy for a one-year period—which could be prohibitively expensive where limited crossings are involved, and to use streamlined registration procedures for obtaining needed certificates. In situations involving limited crossings, it is totally inappropriate to require foreign carriers to undergo the burdensome and lengthy process that now exists, which requires certificate application review and approval in Washington, D.C. The Bill before this Subcommittee makes a number of minor substantive changes to the legislation that appear reasonable and logical considering the day-to-day realities of border commercial traffic.

On behalf of my company, the Reynosa Maquila Association and the Rio Grande Valley Trucking Coalition, I again strongly urge you to recommend enactment of the Bill before your Subcommittee. I also ask that you please consider the significant comments and recommendations of the other individuals appearing here today before your Subcommittee. Mr. Chairman, I thank you for your time and attention.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your testimony, you expressed support for the concept of limiting the operations of Mexican trucking companies to "ports of entry" rather than commercial zones. Do you think the Interstate Commerce Commission's pending proceeding in which consideration is being given to expansion of the Texas commercial zones would address your concerns in this area?

Answer. Yes, granting our Petition—Ex parte No. MC37 (Sub No. 38) to establish a Commercial Zone of Cameron, Hidalgo, Starr and Willacy Counties (South Texas) would indeed address our concerns in having a Commercial Zone in which to operate that supports the economic necessities and realities of our border businesses. (I should point out that we still do have concerns with some of the rules pertaining to being granted a Certificate of Registration).

Question 2. At the Subcommittee's September 20 hearing, we heard testimony in support of amending the safety and insurance requirements of the Motor Carrier Safety Act of 1984 with respect to Mexican trucking operations in the United States. To what degree do you believe Mexican trucking firms should meet U.S. safety standards?

Answer. I will respond to this question on Safety Standards with two references: (1) Policy Statement of the Rio Grande Valley Coalition (attached). Coalition members participated in the development and approval of this policy statement which addresses Safety Standards as well as other issues: (2) Texas Senator Phil Gramm's proposed legislation (S. 1252) which also addresses Safety Standards, among other issues. The RGV-Trucking Coalition supports Senator Gramm's proposed legislation.

The Coalition believes that key items such as (but not necessarily limited to) tires, glass, brakes, lights, etc., should be "safe" but not necessarily "stamped" DOT APPROVED (take into account country of origin when determining safety roadworthiness standards) for Mexican Trucks operating in Commercial Zones.

Senator EXON [presiding]. Mr. Sollner, thank you very much. Mr. Weeks.

Mr. WEEKS. Thank you very much. I also appreciate the opportunity to be able to speak before this committee this afternoon.

My name is William E. Weeks and I am the executive vice president of the Texas Citrus and Vegetable Importers Association.

Senator Gramm and my colleagues before me I think have quite adequately described many of the concerns that we have with the Motor Carrier Safety Act of 1984, and I thought perhaps I might give you just a little bit of information on the magnitude of the produce industry in the Rio Grande Valley and how that this particular law could have an adverse impact upon our industry.

In 1984 our industry crossed into the United States from Mexico over 49,000 truckloads of fresh fruits and vegetables. These were about 39 different varieties of fruits and vegetables, and the total weight was 1.020 billion pounds, which was an all-time record for our industry for bringing these products in.

Now, this was substantially higher than previous years, and the reason for that was in 1983 Texas and Florida experienced a tremendous freeze that literally wiped out our own domestic production of citrus and it tremendously hurt our vegetable industry down there. And so, in order to supplement that loss an increased volume did come in from Mexico of these fresh fruits and vegetables.

The momentum of that loss is continuing now and tremendous volumes do cross the border from Mexico each year.

We have been able to identify in the three-county Rio Grande Valley area from which I come and represent 83 different companies that are involved in the importation of fresh fruits and vegetables from Mexico or other Central and South American countries.

We talked a little bit about the certificate of registration that is required under the act of 1984 and the difficulty in obtaining that certificate in an expeditious manner. The process right now requires that the Mexican carrier make application and submit that application for certificate to Washington, DC.

And it has been our experience, limited experience thus far, obviously, that it takes approximately 4 or 5 weeks at a very minimum in order to obtain such a certificate. In our industry, time is of the essence. We are dealing with a perishable agricultural commodity when the harvest hits, and if we underanticipate our transportation needs—we have got to have transportation available to bring these products into the United States or they will perish.

So we need an expedited procedure in order to obtain these certificates so that that delay does not occur on the border. And this probably would necessitate some sort of a program being implemented on the border in order to handle those applications in a prompt and efficient manner.

We have talked a lot about safety equipment and I will not belabor that subject any more. But let me say this: I think if we could look at the record we would probably find that accidents involving Mexican trucks in the United States have not—are probably far less than those accidents involving American trucks.

Those people are in our country. They are aware that they are in a foreign country. They drive very, very carefully. They do not want to get into trouble and have an accident. And for the most part, I think if you could check that—and I do not know whether the statistics are available or not—you would find there is not a difficulty or problem with safety with those trucks coming into the United States.

The commercial zone is of extreme importance to our industry. I think we have very well had it defined that the commercial zone as it presently is defined is based upon a population formula. Again, our industry is primarily located in—well, exclusively located, those that I represent—in the three-county area, all of which is contiguous with Mexico.

Unfortunately, however, 69 of our 83 companies are outside of the commercial zone, and with the Motor Carrier Act of 1984, if in fact it becomes enforced, 69 of our companies, our members, those that are bringing in these products from Mexico, will be left without any opportunity to receive those products. They are put out of business, just plain and simple.

So it is extremely important that we recognize that that area is a single commercial area and that we open up the definition of those commercial trading zones so that these remaining 69 companies can continue to operate as they have in the past.

Insurance has been alluded to several times during these discussions today. Let me simply say that there is a system that has been used by our industry and others along the border that has worked very well in past years, and it is a system where the United States customs broker purchases an umbrella liability insurance policy and allows for a fee these Mexican truckers to operate under that policy while in the United States for a 24-hour period of time.

This is a system that is in place and it works. It provides insurance on those trucks when they are operating in the United States. And again, I think that is the total extent of our intent in this legislation—is to provide the proper insurance while they are operating in our country.

Briefly, I think that covers my points, and I appreciate the opportunity to testify.

[The statement follows:]

STATEMENT OF WILLIAM E. WEEKS, EXECUTIVE VICE PRESIDENT OF THE TEXAS CITRUS AND VEGETABLE IMPORT ASSOCIATION

My name is William E. Weeks and I am the executive Vice President of the Texas Citrus & Vegetable Import Association with offices located in Harlingen, Texas. I am appearing before this committee today in support of S.B. 1252 which if passed into law, makes it easier, or in many cases possible, for Mexican domiciled trucks to deliver Mexican products to distribution centers located just inside the United States along the Mexican border. The passage of S.B. 1252 is essential to the well being of American companies who import Mexican grown fruits and vegetables since Section 226 of the Motor Carrier Safety Act of 1984 inhibits or in some cases entirely prohibits the importation of produce via Mexican trucks.

The produce import industry of Texas is primarily located in a four county area of South Texas known as the Rio Grande valley. In 1984, we crossed into the United States over 49,500 truck loads of thirty five different varieties of fruits and vegetables totaling over one billion twenty million pounds which to my knowledge was an all time record. In the Rio Grande Valley, we are aware of eighty three companies that are actively involved in the importation of Mexican grown fruits and vegetables.

Specifically now I would like to discuss some of our industry's concerns with the Motor Carrier Act of 1984 and how passage of S.B. 1252 is vitally important to the survival of many of our Associations' members.

The Motor Carrier Safety Act of 1984 requires Mexican for hire carriers of fresh fruits and vegetables to first obtain an annual certificate of registration from the Interstate Commerce Commission before they are permitted to enter the United States. Heretofore, the transportation of fresh agricultural products was exempt from I.C.C. regulation and no "authority" was required. Now under the 1984 Act an annual fee per vehicle of $150.00 is required which is burden enough, but the worst part is applications for an annual certificate must be sent to Washington and issuance, even if properly executed, takes several weeks at the minimum! Since it appears to be the unyielding intent of Congress to require Mexican carriers entering the United States to have a certificate of registration, a system must be developed whereby Mexican truckers can pay their annual fee and immediately obtain a certificate at the U.S. border. Keep in mind three things—first, we are dealing with extremely perishable products that will not tolerate any delay in transit; second, this is a new U.S. law being imposed upon foreign citizens who may not know what is require of them, and third, instant registration is essential when peak harvesting periods are reached perhaps requiring unanticipated numbers of trucks to deliver fruits and vegetables without delay to our distribution facilities. Also, we must have an expedited system of registration or Mexican truckers simply will not "put up with the hassel" and refuse to obtain a certificate leaving us without any way to receive the products we depend upon for our livelihood. At the present time S.B. 1252 does not specifically authorize or instruct the Interstate Commerce Commission to establish an expedited registration system at the border, but we encourage such an amendment be added to the bill.

The Motor Carrier Safety Act of 1984 requires that within eighteen months from its enactment, regulations be issued regarding motor vehicle safety applicable to foreign trucks. We are concerned that the same Department of Transportation equipment standards applicable to American trucks could unfairly be imposed upon Mexican trucks. This requirement, of course, could not be met by existing Mexican trucks since they were not manufactured to comply with U.S.-DOT standards. This is not to say, however, that Mexican trucks should not be safe or roadworthy. In S.B. 1252, within twelve months of its enactment, the I.C.C. must issue "regualtions pertaining to the safety roadworthiness of commercial motor vehicles owned or operated by foreing motor carriers", but must take into account the safety standards "in the country in which the vehicle was manufactured," "the financial burden placed on foreign carriers" to comply and the "detrimental economic impact of such burden on cross-border commerce." We believe this is a reasonable approach that will still assure only safe vehicles are bing allowed to operate in our country.

Assuming the Mexican carrier is successful in obtaining a certificate of registration, our members, all of which are located right along the US/Mexican border, are still not assured of being able to receive their products. In the Motor Carrier Safety Act of 1984 Mexican truckers are limited to operating in the U.S. within the commercial zone of the port of entry. The size of these commercial zones are primarily based upon a population formula and because our border crossing cities are relatively small, the area of service available to the Mexican trucker is also very small. As a result, under the present law, over 50% of the eighty three produce importers in the Rio Grande Valley are unable to receive Mexican produce because they unfortunately happen to be outside the commercial zone of the port of entry. S.B. 1252 expands this port of entry definition to an area "at which a customs officer is authorized to collect duties and to enforce the various provisions of the customs and navigation laws, but in no event shall such port or port of entry extend beyond an area one hundred miles inland from the international boundry between the United States and the foreign country." This change in the law would satisfy our needs but will prohibit Mexican trucks from operating within the interior of the U.S. which is as it should be. I would like to point out that we only want Mexican truckers to bring the produce across the border to the warehousing facilities of our members which are located within a few miles of the border. Then U.S. trucks pick up the product and make delivery to consumers throughout the United States. This is how the system has worked in the past. This change in the law as provided in S.B. 1252 will not alter this transportation distribution pattern and continues to guarantee that the U.S. trucker gets the long haul in the U.S.

Another area this bill addresses is the need for the Mexican trucker to have proof of minimum financial responsibility or put another way, have liability insurance. The 1984 Act provides the trucker must first obtain liability insurance before he will be issued a certificate of registration. This woiuld be fine if he is going back and forth between Mexico and the U.S. on a regular basis, but in our industry a Mexican trucker may only haul a few loads into the U.S. each year and the rest of the time he hauls entirely within Mexico. Is the Mexican trucker willing to purchase a one year liability insurance policy costing hundreds of dollars just to haul a few loads to the United States? They are telling us NO! He simply won't come, leaving us without sufficient means to get our product and those truckers able to buy an annual policy will end up charging us sky high transportation rates due to lack of competition. We had a system that worked beautifully and the provision in this bill will allow us to return to that program of allowing the trucker to buy liability insurance on a trip basis. The way it has worked in the past is the U.S. Customs Broker purchases an umbrella policy and, for a fee, allows the Mexican truckers to be covered under his policy for up to 24 hours. Again, this system has worked flawlessly for several years and should be allowed to continue.

I sincerely thank you for your attention and hope I have explained the importance to our industry that S.B. 1252 be passed into law. Time is of the essence. The volume of produce imports from Mexico will begin to pick up within the next four to six weeks and I urge this Committee to act affirmatively and quickly on this legislation.

TEXAS CITRUS & VEGETABLE IMPORT ASSOCIATION,
November 15, 1985.

Hon. BOB PACKWOOD,
U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing in response to your letter dated October 28, 1985, asking me to address two questions dealing with the ability of Mexican truckers to deliver products in the United States. I thank you for the opportunity to respond to these questions.

Question No. 1 is: The Interstate Commerce Commission is considering a petition to expand the commercial zones in Texas so that the four southernmost counties of the State along the border would comprise a commercial zone. If the ICC were to approve this petition, to what extent would that address your concerns about the effects of the Motor Carrier Safety Act of 1984 on Mexican trucking operations in the United States?

Our Association has been very intimately involved in trying to have defined, by the Interstate Commerce Commission (I.C.C.), the four South Texas counties of Hidalgo, Cameron, Willacy, and Starr as a single commercial zones. These counties lie along the Mexican border and this area is commonly known as the Lower Rio Grande Valley. Our reason for needing to achieve this is because the Motor Carrier Safety Act of 1984 prohibits Mexican truckers from making a deliveries of fresh fruits and vegetables beyond the defined commercial zone at the point of entry in which he enters the United States. The general method for defining the area of a commercial zone is based upon a population formula—the larger the city at the point of entry, the larger the commercial zone. Part of our problems are the "cities" at the point of entry are small and therefore, the area in which Mexican truckers can make their deliveries is very restrictive. In the past, this has not been a problem since the interstate movement of raw agricultural commodities has not been regulated by the Interstate Commerce Commission. Again though, the Motor Carrier Safery Act of 1984 now regulates that movement.

Specifically, this is how the new law affects us. There are eighty-four American owned and operated companies within the four county Lower Rio Grande Valley that import and distribute Mexican grown fruits and vegetables. Of these eighty-four companies, only fourteen are located within the presently defined I.C.C. Commercial Zones, leaving sixty-nine companies without the ability to receive the goods from Mexico they depend upon for their livelihood.

Since given the opportunity, we do want to make our point clear. We don't need or want Mexican trucks to operate within the United States beyond the immediate border area. Their roll is to deliver the produce to American companies along the border that specialize in warehousing and marketing these items. Then, American trucks pick up their fresh fruits and vegetables and deliver them throughout the United States. Failure of the I.C.C. to favorably act upon our commercial zone petition will force many companies out of business, unemployment will go up, the overall volume of produce coming in from Mexico will go down resulting in less demand for transportation by U.S. truckers, and ultimately consumers will not have the volume and variety of a fresh fruits and vegetables on a year round basis they have been enjoying.

Question No. 2 reads: To what extent should Mexican trucking operations meet U.S. equipment safety standards?

Our first concern about equipment standards applicable to Mexican trucks is the Department of Transportation simply saying "all" Mexican trucks entering the United States must meet D.O.T. standards. Period! Of course, this would prohibit any Mexican trucks from entering the U.S. since they were not manufactured to D.O.T. specifications. If this should happen, all of our importers would be out of business since Mexican trucks bring the produce up from the interior of Mexico and deliver within the U.S. to points just inside the international border. There is little doubt that Mexican trucks are manufactured to acceptable safety standards—but not to D.O.T. standards.

We want only safe vehicles on our streets and highways, but any standard that is established must be reasonable and economically achievable. What do we intend to do about safety standards applicable to Mexican cars crossing by the thousands each day and operating within the U.S.? Probably nothing since they are a lot safer than many of the U.S. "junkers" we have on our highways. The key here is maintenance after manufacture and we should perhaps require a reasonable roadworthy insepction to determine if he vehicle is basically safe.

We don't think anything really extensive is required keeping in mind that the trucker is also concerned about his safety and also recognizing that the trucker will only be crossing the U.S. border a few miles, at most, for perhaps two to eight hours. Just thinking out loud, maybe a program could be developed whereby certain equipment on the Mexican trucks such as brakes, lights, horn, tires, etc. could be checked at the border and an inspection sticker affixed to the windshield good for one year—similar to our own Texas State inspection. Now that I get to thinking about this, what is required of Canadian truckers? And, are there any statistics indicating that Mexican trucks are unsafe and cause accidents? Is their ratio of accidents incidents higher than U.S. truckers? I dare say Mexican truckers operating in foreign country drive much more safely and have far fewer accidents per mile traveled than U.S truckers!

I sincerely hope my comments adequately answer your questions. The Motor Carrier Act of 1984 holds some grave concerns for our industry and overall Rio Grande Valley economy. In 1984, our 102 thousand Mexican trucks entered the U.S. through Valley border crossings. Almost 50 thousand of these trucks brought in 1,020,075,280 pounds of fresh fruits and vegetables. I am sure you understand our concern and hope you will do everything within your power to allow us to continue to operate with a minimum of government intervention.

Respectfully submitted,

WILLIAM E. WEEKS,
Executive Vice President.

Senator EXON. Mr. Weeks, thank you very much.

As you came to the last part of your presentation, I was going to ask you about safety and about insurance. Since I am from a part of the country where we do not have the difficulty that you have with the border, I am not as familiar as you with the specifics of your problem.

Under the present system that we have, have the Mexican insurance companies been reliable and has there been generally satisfactory settlements of claims? You said that they were careful drivers and they do not want to get into trouble here, and I can appreciate that. But there must be some accidents.

Can any of the members of this panel tell me what the history has been on the settlement of insurance claims from Mexican companies where the U.S. citizens have been injured or had property loss?

Mr. HAGANS. I think—and I am going to beg your question—the answer relates to where the insurance comes from. The Mexican carriers now crossing the border buy U.S. insurance.

Senator EXON. They buy U.S. insurance?

Mr. HAGANS. Yes.

Senator EXON. Is that required?

Mr. HAGANS. That is required. And what we are basically saying is that is existing law. When they come across, they are required to have insurance for the length of time they are in the United States. That system works.

Section 226 requires these Mexican carriers, whether it be for a one-trip basis or a five-trip basis, to obtain a policy for 1 year, and therefore they have to pay a premium for 1 year just to get their certificate to cross the border. That makes no sense.

Senator EXON. Whether they bring that truck in once or a hundred times, is that what you mean?

Mr. HAGANS. That is right. For instance, it does not take into account economic reality in the produce and citrus industry. A truck may cross once, two, three times a year. They can buy 24-hour insurance.

Why should that company be required or that individual, Juan Dominguez that lives wherever he might live, be required to buy a policy for a year when he crosses the border three times? If it is General Motors or General Electric that has entered into a contract arrangement with a major Mexican carrier, sure, they should be required to buy a year's policy. That makes sense.

So our only argument is that the Motor Carrier Safety Act of 1984 does not make any exception for limited trips.

Senator EXON. So if I understand the reasoning, if the system that they have now of purchasing U.S. insurance when they come into this country would be extended under this act to just let them come in further, is that basically it, basically what you are saying?

Mr. HAGANS. Well, they do it now. Mr. Exon, to be candid with you, the ICC does not enforce this legislation. If they did we would have mass pandemonium on the border.

But yes, they would be allowed. They would have insurance for whatever the customs area would be that they would go to, whether it be a bonded warehouse or a packing shed or a foreign trade zone. There would be insurance for that particular area.

Senator EXON. If I understand what you are telling me, then, a Mexican truck that comes into the United States, whether it is on a yearly basis or a 24-hour basis, buys American coverage?

Mr. HAGANS. Yes.

Senator EXON. In other words, Mexican companies do not insure those vehicles in the United States?

Mr. **Hagans**. I am not saying that is not possible. What I am saying is as a practical reality the carriers we are familiar with, all of us at this table, I do not know one that does not carry U.S. insurance.

Senator **Exon**. Do they have to prove up insurance when they come into the country?

Mr. **Hagans**. Yes.

Senator **Exon**. Is that part of the inspection?

Mr. **Vale**. Customs will not release them unless they provide proof of insurance, which essentially is the customs broker buys an annual umbrella policy and then just adds him onto his policy for the 24 hours that he will be in the United States, and then it terminates, which is a much more reasonable approach.

When we go to Mexico on vacation, I buy trip insurance for however many days I am going to be down there in my automobile, and when I come back that is all I have. I do not have to pay an annual policy.

Senator **Exon**. Gentlemen, thank you very much. We appreciate your coming to testify.

We will go ahead with panel number two now: Mr. James Kimble, Mr. Robert Dols, and Mr. Thomas Shea. Gentlemen, would you come forward, please.

Gentlemen, we are very glad to have you. I would tell you the chairman will be back shortly. He had to go to the floor to introduce a piece of legislation, hopefully noncontroversial legislation, although about every time we say that things do not work out that way in the U.S. Senate.

But he anticipates being back very shortly, so we will proceed in any manner that you see fit.

Mr. Kimble is on line first if that is the way you want it. We will proceed with you, Mr. Kimble.

STATEMENTS OF JAMES KIMBLE, SENIOR COUNSEL, AMERICAN INSURANCE ASSOCIATION; THOMAS R. SHEA, CIC, VICE PRESIDENT, PROFESSIONAL INSURANCE AGENTS; AND ROBERT M. DOLS, COMMERCIAL AUTO MARKET MANAGER, NORTHLAND INSURANCE CO., REPRESENTING THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Mr. **Kimble**. My name is Jim Kimble. I am a senior counsel with the American Insurance Association. The association provides approximately 45 percent of the commercial auto insurance coverage offered throughout the United States.

We are not the industry most affected by the Motor Carrier Act. However, we are very interested and very involved, principally due to the inclusion of the financial responsibility requirements in the Motor Carrier Act.

We have heard a great deal of concern expressed this afternoon associated with availability of commercial auto insurance and affordability of commercial auto insurance. I would like to begin by addressing the issue of availability of insurance.

Technically, there cannot be an availability of insurance problem associated with commercial automobile insurance coverage. Each individual State has a residual market mechanism, an involuntary insurance mechanism. They are known as assigned risk pools in this particular instance, and if a commercial driver can show that he has been declined by three insurers, he has a valid driver's license, and he can pay the premium, then the assigned risk pool must provide that driver with insurance coverage.

So there cannot be an availability problem. There seems to be a bit of a misconception about that.

Senator EXON. Well, let me ask you this question, Mr. Kimble, right there, since I have had some experience with this. Is it not true that the assigned risk pool has substantially higher premiums?

Mr. KIMBLE. In most instances the premium is higher. Of course, it should be. These are the risks which were not accepted in the voluntary market.

In some instances, affordability can become a function of availability. That is, if you cannot pay for it then you perhaps simply cannot acquire it. It should be emphasized, however, that it was the intent of Congress in 1980 when it enacted the Motor Carrier Act that the inclusion of the financial responsibility requirements in that Act were designed to transform the insurer into a surrogate regulator.

If you will look at the committee report of the House Public Works Committee, it says flatly, explicitly: "One of the reasons for the financial responsibility requirements is that the insurance industry will remove the bad driver from the road, either because the driver cannot acquire coverage or cannot afford it."

Perhaps that is beginning to happen today.

Senator EXON. Well, I am sorry to interrupt your testimony. I was listening to your testimony and I thought that the—I thought you implied that there was no such thing as a person not being able to afford insurance. And I know from firsthand that that has been—somebody can afford a $160 premium, but they might not be able to afford a $180 premium for the same coverage.

Now, sure, there might be bad drivers and there are circumstances, but there are cases, are there not, where from a practical standpoint you cannot afford the higher premium?

Mr. KIMBLE. That very well may be.

Senator EXON. Thank you.

Mr. KIMBLE. Moving on to the issue of affordability of insurance, rates have gone up substantially. We simply cannot apologize for our rate increases. We have been underpricing commercial auto insurance for years. We have in the past balanced out our underwriting losses with investment income.

This has been discussed earlier this afternoon. Last year it simply was not the case. Our underwriting losses were $21 billion, our investment income was approximately $17 billion. So there has been a drain on our surplus of approximately $4 billion.

Earlier this afternoon, it was suggested that there would be a capacity shortfall between $63 and $80 billion. I think that perhaps has been overstated. The amount of drain on surplus was to some extent overestimated. We have through stock offerings recouped perhaps more than half of that drain on surplus.

So those figures with respect to the capacity shortfall have to be modified. It is clear that there will be a shortfall of availability of insurance coverages in a number of lines, including commercial auto, which may be due to our surplus problems.

But I think it has been overstated a little bit. It certainly will not be as high as $80 billion, and it is unlikely to be as high as $60 billion. Also, it should be emphasized that that shortfall is not specific to commercial auto. It has to do with all lines of property casualty insurance coverage.

With respect to the problems that we have had with the Motor Carrier Act, moving away from the issues of availability and affordability, the biggest problem we currently have with the act has to do with the categories of liability associated with the Motor Carrier Act in section 30.

There are three categories of liability: bodily injury, property damage, and environmental restoration. The insurance industry understands property damage and bodily injury. Those definitions have been interpreted in the courtroom for years and they are basically standard definitions. We know how to respond to those liability exposures.

We have no idea what environmental restoration means. There is a definition, of course, in the endorsement form which is attached to our insurance policy, but we simply do not know how those words of art will be interpreted in the courtroom.

Recently we have had very, very bad experiences with interpretations of our contracts associated with Superfund. In fact, my understanding is that that bill is on the floor today for consideration.

Senator EXON. It is. There has been one vote already and there probably will be more.

Mr. KIMBLE. The definition of "facility" in Superfund does include motor carriers. So truckers are subject to Superfund.

Our insurance policies associated with pollution coverages in Superfund have been badly misinterpreted in the courtroom. I will not go into any details because I see my 5 minutes are up, but they have been grossly misinterpreted, and they have created liabilities which we did not intend to cover and for which we did not collect a premium.

We are very concerned that, due to the inclusion of the phrase "environmental restoration" in the Motor Carrier Act, our policies will again be misinterpreted. And in dealing with pollution exposures, you are talking about potentially catastrophic losses, millions upon millions of dollars of liability exposure.

Senator EXON. So I understand, are you talking primarily about spills of chemicals or other toxic materials through either accident of the truck or accidental spillage? Is that your main concern?

Mr. KIMBLE. Precisely, yes, tank trucks.

[The statement follows:]

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

The American Insurance Association (AIA) is a trade association representing 177 property and casualty insurers doing business throughout the United States. Ten of the fourteen insurers which write two percent or more of the commercial auto liability market are AIA member companies. These companies write a combined total of forty-five percent of the direct written liability premiums for commercial auto insurance. Consequently, our member companies are vitally interested in the insurane provisions of the Motor Carrier Act of 1980.

Commercial automobile insurance rates have increased sharply during 1984. The principal reason for increased rates is that paid losses have surpassed earned premiums. Insurers which provide commercial auto insurance cannot afford to indefinitely price their product at less than cost. Commercial auto insurers have discounted the cost of commercial auto insurance for years and are currently increasing rates in order to reflect their loss experience. As stated in the statement of the American Trucking Associations, Inc. before this Subcommittee on September 9: "During the early 1980's, insurance was a bargain."

INSURER OPERATING RESULTS

In order to put the present commercial auto insurance problem in perspective, it is necessary to understand the overall financial condition of the insurance industry today. Since 1980, losses and expenses have exceeded premiums primarily because prices failed to keep pace with loss costs. As a result, an unbroken string of underwriting losses began in 1979 and grew at an average annual rate of $3 billion through 1983. An even more dramatic increase took place in 1984 when underwriting losses jumped $8 billion, reaching $21.3 billion. Losses from underwriting for the six years 1979 through 1984 totaled $55 billion. With investment income falling far behind underwriting losses, the industry's pre-tax operating income—the combination of investment income and underwriting results—plunged to a negative $3.8 billion in 1984.

The commercial liability lines have been particularly affected. Four key commercial lines—general liability, commercial multi-peril, workers' compensation and commercial automobile—have suffered enormous underwriting losses.

Because the property and casualty insurance industry's capacity to provide insurance has been reduced due to the $3.8 billion drain on surplus, insurers have been forced to become more cautious in their risk selection. It is both prudent and responsible for insurers to review their policyholders with the intent of raising rates to reflect losses or nonrenewing in order to avoid unpredictable, potentially catastrophic exposures. Insurers' uncertainty associated with judicial interpretations of the scope of damages associated with environmental restoration and recent judicial misinterpretations of other pollution exposures suggest that commercial auto insurance should be provided on a selective basis.

The insurance industry's already impaired capacity will be further tested by the 12,500 new entrants into the trucking industry since 1980 who will be required to obtain at least $750,000 in insurance coverage in order to meet the minimum financial responsibility requirements mandated by the Motor Carrier Act.

ENVIRONMENTAL RESTORATION

Section 30 of the Motor Carrier Act directs the Secretary of Transportation to establish regulations to require minimum levels of financial responsibility sufficient to satisfy liability covering "public liability, property damage, and *environmental restoration* (Emphasis added) for the transportation of property for hire by motor vehicle . . . " The endorsement (Form MCS-90) which must be attached to the commercial auto insurance policy in order to comply with the Motor Carrier Act contains the following definitions:

Environmental restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

Accident includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

The definition of "facility" in the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" includes "motor vehicle". Motor vehicles for hire are subject to the strict, nearly absolute, joint and several liability system established in "Superfund". The transporter's liability does not terminate when it gives up possession of the hazardous substance.

Judicial misinterpretations of insurance policies designed to respond to limited types of pollution exposures have created concerns among insurers. Words and phrases of art which are included in these policies also appear in the commercial auto policy. Before the enactment of the Motor Carrier Act, commercial auto insurers responded to bodily injury and property damage but were unfamiliar with judicial interpretations of damages associated with "environmental restoration". The enormous unintended exposures associated with Superfund have created a reluctance on the part of commercial auto insurers to provide coverage for environmental restoration under the Motor Carrier Act. Lack of familiarity with the liability exposure associated with the term, and the possibility of judicial misinterpretations of key words and phrases in the Form MCS-90 or the insurance policy have created a reluctance on the part of insurers to provide the coverage.

Recent court decisions have expanded insurance coverage for Superfund exposure beyond that which the liability policies were designed to provide. The Comprehensive General Liability (CGL) insurance policy is the instrument used to provide the vast majority of insurance protection for commercial entities from liability for bodily injury and properly damage. The standard CGL insurance policy is nothing more than a contract between the insurer and the insured in which, among others, the parties define both the risks covered by the insurance and those excluded from coverage. The premium charged by the insurance company relates directly to the frequency and severity of the risk that the company intends to insure.

Most relevant to claims for cleanup costs arising from CERCLA, the insurance industry intends its standard CGL policy to provide only for specifically defined events causing pollution which take place off the property of the insured and cause property damage or personal injury. Crucial operative provisions in the standard CGL policy include:

Pollution Exclusion.—It was never the intention of the insurance industry to cover liability arising from all forms of pollution. Thus, every CGL policy contains provisions excluding certain forms of pollution from coverage. Companies have used different language to define the nature of the pollution that was not being covered in its policies. Most insurance companies chose to impose a temporal restriction and to permit coverage for only that pollution which was "sudden and accidental." With this exclusion, for example, the industry intended to cover the breach in the hazardous waste impoundment wall that caused wastes to run off onto neighboring property but not to cover the gradual leaking of wastes from that impoundment.

A CGL policy containing the "sudden and accidental" exclusion provides: "this insurance does not apply . . . to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic, chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental." (Emphasis added)

Occurrence.—Coverage exists only if there is an occurrence which is defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;"

Property Damage and Bodily Injury.—The CGL policy contains definitions of the terms "property damage" and "bodily injury." These definitions are used to help determine (1) the events that must occur in order for there to be insurance coverage and (2) the level of benefits to be provided. The latter is to guarantee that insurance benefits are to be paid only for actual, not speculative, property damage or bodily injury.

In addition to these provisions, other language in the standard CGL policy establishes specific dollar limits of insurance coverage for each event triggering liability. By this language, the insurer sought to minimize the unpredictability that any liability system contains by establishing a limit on the amount of money that that insurer could stand to lose as a result of a particular event.

INSURANCE COVERAGE AS FOUND BY COURT DECISION

Court cases interpreting these critical provisions of the industry's CGL policy have expanded considerably the level of insurance coverage that the industry intended to provide. These court interpretations would require the industry to fund enormous obligations which it never contracted to assume, and for which it never collected premiums.

It must be emphasized that not all the cases interpreting the CGL policies are uniform; several cases, in fact, interpret the CGL policy language to reflect what the insurance industry understanding was the intent of both parties to the contract. Also, many of the decisions adverse to the industry have not yet reached the highest appellate courts and, thus, conceivably could still be reversed. Nevertheless, having considerable experience at spotting emerging judicial trends, the insurance industry believes that the decisions rendered to date compel it to conclude that courts are electing to interpret loosely the insurance policy contract language in order to maximize insurance coverage for damages related to hazardous wastes.

Specifically, we perceive a trend in court decisions that interpret our standard CGL policy to broaden the scope of intended coverage as follows:

Narrowing the intent of the owned property exclusion to find liability for damage to an insured's property.[1]

Overriding the scope of the pollutioin exclusion so that, for example, well contamination caused by seepage at a hazardous waste site that occurred over a 12 year period was found to be covered despite the policy requirement that coverage be afforded for only "sudden and accidental" pollution.[2]

Converting the CGL's policy dollar limit per occurrence into a per claim dollar limit.[3]

Setting aside the definitions of property damage and bodily injury so as to award speculative damages for the possibility of future harm.[4]

The possibility of similar misinterpretations leading to expansion of coverage in the commerical auto policy exists due to the inclusion of the category of damages for "environmental restoration" in the Motor Carrier Act. Many commercial auto insurers have reacted by excluding environmental restoration from their commercial auto policies. However, language in the MCS-90 endorsement states that the insurer will pay damages associated with environmental restoration regardless of exclusions in the insurance policy to which the form is attached. The insurer is given a subrogation right against the policyholder so that it may recover damages which are excluded by the contract, but in many instances, the policyholder will be unable to reimburse the insurer for large claims. The insurance industry's experience associated with other pollution exposures has lead many insurers to conclude that the provision of insurance for "environmental restoration" creates to many unknowns and is, therefore, dangerous.

FINANCIAL RESPONSIBILITY REQUIREMENTS SHOULD BE SET BY DOT

The AIA continues to believe that the Motor Carrier Act and the Bus Regulatory Reform Act should be amended so that the Department of Transportation is granted the authority to adjust the levels of financial responsibility required by the Acts. Currently, the minimum limits are established by Congressional mandate. A DOT rulemaking process would allow flexibility in establishing minimum limits of insurance coverage in the form best suited to review the information on which appropriate levels should be established.

The Motor Carrier Act and the Bus Act constrain DOT by including specific dollar amounts of insurance coverage. Specific dollar limits should not be legislated. The establishment of dollar minimums should be delegated to the rulemakers. The regulatory agency which has the responsibility to implement the legislation needs the statutory freedom to equitably adjust the parameters of insurance requirements based on their investigations and expertise. Proper levels of financial responsibilities should be established through a rulemaking process based on relevant information.

HIGHER INSURANCE LIMITS DO NOT ENHANCE SAFETY

The Congressional belief that higher insurance limits will result in increased safety through the inability of the unsafe carrier to either obtain insurance coverage or to obtain coverage at an affordable cost is a major misconception. The report associated with the Motor Carrier Act of 1980, authored by the House Committee on Public Works and Transportation, states that "an unsafe carrier will have an increased premium, and a totally unsafe carrier may not be able to obtain the insurance to operate . . ." However, while insurers may refuse to provide coverage in the voluntary market due to poor accident history, financial instability, or failure to meet minimum safety standards, all motor carriers have access to insurance through a residual market mechanism.

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[1] *See*, for example, *Riehl v. Travelers Insurance Co.*, F. Suppl. , Civil Action No. 83-0085 (W.D. Pa., August 13, 1984).

[2] *See*, for example, *Jackson Township Municipal Utilities Authority v. Hartford Accident and Indemnity Company*, 186 N.J. Super. 156, 451 A.2D 990 (1982). *Waste Management of Carolinas, Inc. v. Peerless Insurance Company*, 323 S.E. 2D 726 (Court of Appeals of North Carolina, December 28, 1984).

[3] *See Township of Jackson v. American Home et. al.*, Docket No. L-29236-8 (Law Div., August 31, 1984).

[4] *Ayers et al. v. Township of Jackson*, 189 N.J. Super. 561 (Ocean County, April 5, 1983).

ASSIGNED RISK POOLS ASSURE AVAILABILITY

Some insureds have suggested that commerical auto insurance coverage is unavailable. Coverage is available to all commercial drivers in all 50 states through the assigned risk pools. It must provide the limits and coverages required by law as long as a valid operator's license remains in effect and the policy premium is paid. Although rates may be higher than in the voluntary market, rates are filed for prior approval and may be reviewed by the state insurance commissioner in a formal hearing process.

In addition, insurers will be asked to accept $5 million exposures in the assigned risk pools which they have declined in the voluntary market. It is of great concern to insurers that they must accept involuntarily exposures which they were unwilling to accept in the voluntary market.

NATIONAL MOTOR VEHICLE TELECOMMUNICATIONS NETWORK

The perception that high insurance requirements associated with the Motor Carrier Act will enhance motor carrier safety is misplaced. Insurance responds after the accident in order to assure that injured parties receive restitution for their loss. The effect of safety requirements can be seen during and before the accident.

The key to any review of motor carrier safety must focus on the driver. The American Trucking Associations, Inc. (ATA), in its testimony before the Senate Committee on Commerce, Science and Transportation on June 14, 1983, stated: "However, we believe it is imperative that legislation be enacted for better control of the human factors that cause accidents because most accidents caused by trucks result from human error, not from defective vehicles." A vast majority, perhaps 85–90 percent, of motor carrier accidents results from driver error. As stated by ATA before the Senate Commerce Committee, "In order to improve truck safety, the government needs to refocus its efforts on elimination of human error and other human factors which cause truck accidents."

The American Insurance Association supports the notion of a national telecommunications network to effectuate a single driver's license for commercial drivers. Multiple licensing for the purpose of avoiding state motor vehicle department improvement actions is a common practice, particularly by commerical drivers.

A 1981 study of five states, prepared by the National Highway Traffic Safety Administration and the American Association of Motor Vehicle Administrators found that 10 to 32 percent of commercial drivers held more than one driver's license. The report stated: "If this condition prevails nationwide, as seems apparent, the logical conclusion is that none of the states are able to maintain current, complete data on this driver population and that a large percentage of these drivers are avoiding state driver improvement actions."

The Federal National Driver Register (NDR) has been attempting for 20 years to accomplish a national communication system for transmittal of driver motor vehicle records. It is anticipated that some meaningful progress may be achieved sometime during the 1990's. The insurance industry spends millions of dollars annually purchasing motor vehicle records. However, there is no guarantee of acquiring a current or complete record report. The National Driver Register cannot identify a multiple licensed driver, does not pinpoint commercial drivers, and is restricted to responses involving DWI, reckless driving, and felony-type convictions.

The results of a limited national reporting system is that identifying "problem" drivers and taking corrective driver improvement actions is severely limited. Automobile underwriters are effectively handicapped in their efforts to properly select and price their product. Availability and affordability issues persist.

EXHIBIT 1

COMMERCIAL AUTO LIABILITY
Year-Ended Underwriting Results

Year Ended	Written Premium	Earned Premium	Loss and Loss Adjustment Expense: Dollars	Loss Ratio	Underwriting Expense: Dollars	Expense Ratio	Dividend Ratio	Combined Ratio
1980:4	$4613	$4539	$3652	80.5	$1322	28.7	0.6	109.7
1981:4	4640	4635	4089	88.2	1402	30.2	0.7	119.1
1982:4	4641	4610	4342	94.2	1471	31.7	0.8	126.6
1983:4	4640	4613	4580	99.4	1498	32.3	1.0	132.7
1984:4	5290	5004	5606	112.0	1663	31.4	0.9	144.3
1985:1	5671	5189	5798	111.7	1739	30.7	0.8	143.2
1985:2	6171	5529	6082	110.0	1850	30.0	0.8	140.8

Note: All data supplied by A.M. Best. All dollar values are in millions. Expense ratio is to written premium. Loss ratio and dividend ratio are to earned premium. Combined ratio is the sum of these three ratios.

EXHIBIT 2

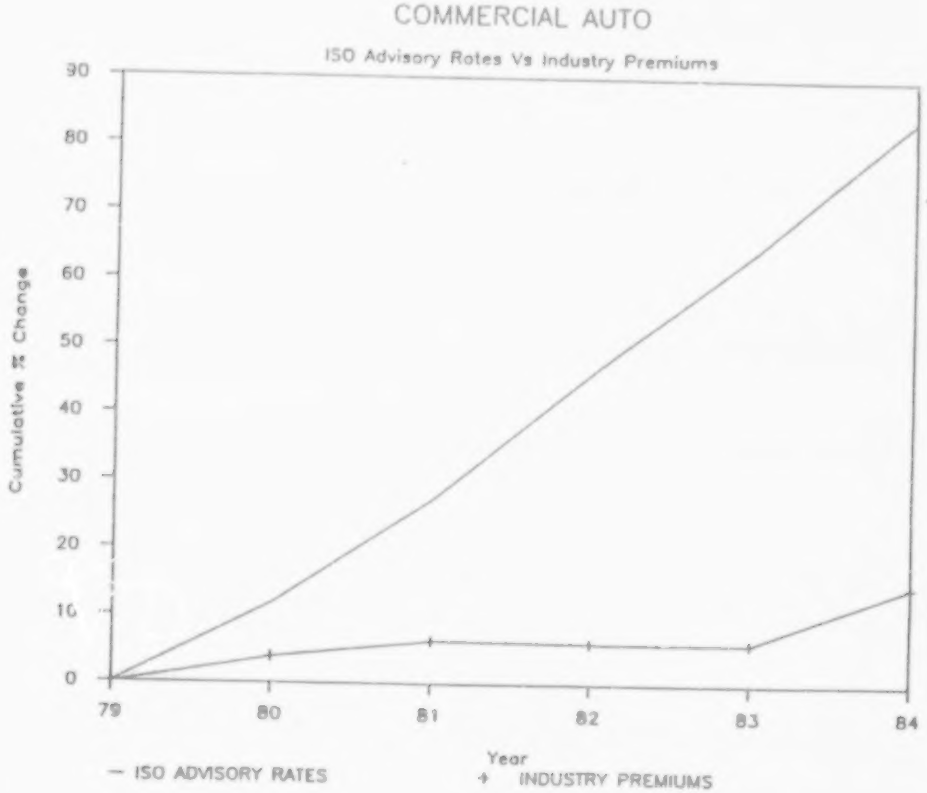

EXHIBIT 3

COMMERCIAL AUTO

INCURRED LOSSES

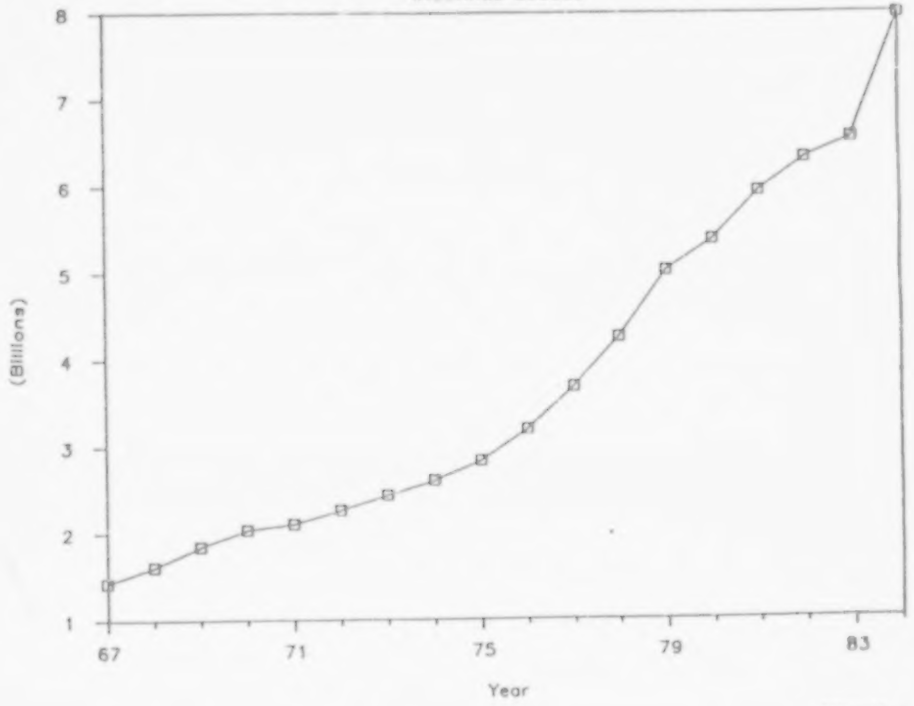

EXHIBIT 4

COMMERCIAL AUTO COMBINED RATIOS

STOCK AND MUTUAL COMPANIES

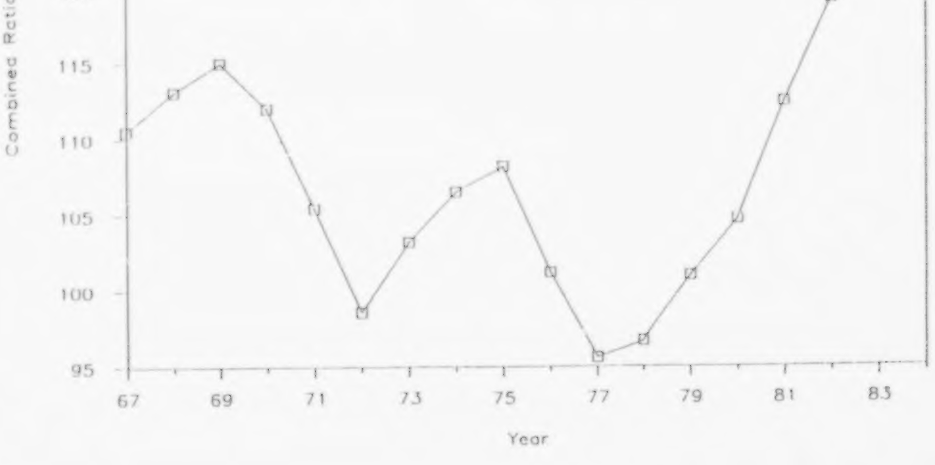

EXHIBIT 5.—COMMERCIAL MOTOR VEHICLE ACCIDENT FREQUENCY

[Per 1 Million Miles]

Classification [1]	1983	1984	First Half of 1985
1. Private Passenger Type (Private passenger vehicles owned by commercial ventures; not by individuals)	4.32	4.61	4.10
2. School Buses	10.50	6.48	10.23
3. Public Transit (Municipal Bus Lines)	36.89	36.98	37.22
4. Intercity Buses (Interstate—Greyhound, Trailways)	4.14	4.24	4.32
5. Interstate Truckers (Truckers operating more than 50 miles from terminal)	2.65	3.06	3.39
6. Non-Interstate Truckers (Truckers operating 50 miles or less from terminal)	36.15	40.05	24.98

[1] Both trucking classes include common carriers, contract carriers, and private carriers. (Nos. 5 and 6.)

Source: National Safety Council.

[The following information was subsequently received for the record:]

American Insurance Association,
Federal Affairs Department,
Washington, DC, December 3, 1985.

Senator Bob Packwood,
U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Senator Packwood: The questions and answers listed below are designed to supplement the hearing record of the Surface Transportation Subcommittee's September 20 hearing on economic deregulation of the trucking industry.

Question 1. In your testimony, you advocated allowing the Department of Transportation to determine appropriate minimum levels of financial responsibility for motor carriers. If the Department were to set levels lower than those contained in the Motor Carrier Act of 1980, do you think the public would be adequately protected in the case of an accident?

Answer. Statistics submitted to the Senate Committee on Commerce, Science, and Transportation indicate that commercial auto accidents which result in damages less than $500,000 exceed 99 percent of all commercial auto accidents. However, particularly with respect to transporters of extra-hazardous substances, the American Insurance Association recognizes that there is a potential for accidents which result in damages in excess of $5 million (the current Motor Carrier Act limit for transporters of extra-hazardous substances).

It should be emphasized that the limits established in the Motor Carrier Act are minimum levels of insurance. A majority of motor carriers maintained insurance limits in excess of $5 million prior to the enactment of the Motor Carrier Act. The existence of financial responsibility requirements bears no relationship to the potential liability for motor carriers. The public has access to federal and state, common and statutory law regardless of financial responsibility requirements in the Act.

Moreover, there is a possibility that the rising cost of insurance and the increased insurance limits which went into effect on January 1, 1985 may result in a reduction in the utilization of motor carrier surplus directed at new equipment, driver training, and maintenance. A reduction in capital directed at safety and engineering features could result in an increased number of accidents, thereby reducing public safety.

Only a minuscule number of commercial auto accidents result in damages in excess of $500,000. Although we recognize that there may be an occasional accident which results in damages in excess of $5 million, the American Insurance Association believes the public would be adequately served if the Department of Transportation were given the authority to determine appropriate minimum levels of financial responsibility for motor carriers and concluded that current Motor Carrier Act financial responsibility requirements were unnecessarily high.

Question 2. In testimony before this Subcommittee on September 9, the American Trucking Associations stated that the current insurance crisis is presenting a "formidable barrier to entry" into the motor carrier industry and threatens to be even more restrictive than pre-1980 entry regulation. What is your view of this assertion?

Answer. The necessary increases in commercial auto insurance premiums may act as a barrier to entry for some motor carriers. It must be emphasized that each state in the United States has an assigned risk pool which must provide commercial auto insurance coverage if the participant has a valid drivers license and can pay the premium. Unavailability of commercial auto insurance coverage should not act as a barrier to entry. However, increased premiums in both the voluntary market and the assigned risk pool could discourage some new entrants. Affordability can become a function of availability.

Question 3. To what extent do the liability insurance premium increases being experienced by interstate truck and bus companies reflect the safety record and loss experience of the carrier involved?

Answer. In order to appreciate the influence of a motor carrier's individual safety record and loss experience on arriving at a premium for the individual carrier, one must understand the difference between ratemaking (actuarial science) and establishing an individual premium (underwriting). With respect to commercial auto insurance, the ratemaking process involves the accumulation of data by zone (geographical area) and by category of commercial auto vehicle. An *advisory* rate based on the loss experience of a particular category of commercial auto carrier in a zone is produced through actuarial calculations. Individual insurers may deviate from the advisory rate considering factors such as the individual carrier's safety record and loss experience. Because commercial auto insurers have discounted dramatically from the Insurance Services Office advisory rates during the last five years, carriers with excellent safety records and loss experience will experience some premium increases. However, loss and safety records should continue to influence a motor carrier's insurance premium.

I hope these responses will be of value to you.

Respectfully submitted,

JAMES L. KIMBLE,
Senior Counsel.

Senator EXON. Thank you.

Mr. SHEA. My name is Tom Shea. I am an independent insurance agent from Jamesville, WI. I am also a vice president of the National Association of Professional Insurance Agents, referred to as PIA. That is an association representing some 40,000 members throughout the country.

As the subcommittee has previously heard, there are problems in securing the kinds of insurance coverage to properly comply with the provisions of the Motor Carrier Act. These difficulties run the gamut from a total absence of available coverage to staggering costs when the coverages are available.

PIA has been aware of such problems since April 1984. In researching these problems associated with providing coverages under the Motor Carrier Act, we interviewed numerous agents who provide the coverage for the trucking industry.

They advised us that the market for this line of business was tight. We shared these market observations with the Department of Transportation in statements submitted on the act and its limits of liability.

There are several reasons for the market dilemma: Overall capacity problems in the general liability market, the perception that transporters are operating under increasingly unsafe or marginal conditions because of the deregulatory pressures, and insurance industry trepidation with lines of insurance containing any form of pollution liability.

With regard to the capacity problems, the insurance industry has recently ended a 6-year pricing war. The long-term effect of inadequate rates and increasing loss ratios has finally surpassed the ability of this industry to recover through wise investment practices. Without sufficient capital, the industry cannot meet the demands of the market.

And, unlike previous tight market periods, the lack of capacity is a worldwide situation affecting the international reinsurance market as well as the U.S. domestic markets. As a result of limited capacity, lines of insurance which traditionally are marginally profitable are either cut back or eliminated, depending upon the insurance carrier's abilities.

Such is the case for commercial auto and garage-keeper's liability insurance, the two coverages required under the Motor Carrier Act. When insurance coverages are available, regardless of how limited the coverage offered, prices have increased.

Another problem affecting this needed coverage is the apparent poor loss experience associated with it. We need only look at the news headlines for the last several months for examples of accidents involving hazardous materials and transporters.

Studies, such as the one done for the Capital Beltway report a disproportionate number of trucks are involved in beltway accidents. While the merits and validity of such statements and studies are challenged by the transport industry, the perception is that economic pressures are forcing the trucking concerns to operate on the edge.

Hard data on loss experience takes time to develop within the insurance industry rating structure. Insurers will use very conservative underwriting studies and standards when preliminary loss information even suggests a trend of steadily increasing losses.

Additionally, the technology for handling spills and our understanding of the short and long-term effects of such accidents is still evolving. Insurers prefer to fully understand the nature and the scope of the risks being insured.

Such is not entirely the case with this type of coverage. The net result is that insurance companies are shying away from this line of business until things settle.

Finally, in June 1984, PIA reported that the insurance industry was struggling to provide a market for pollution liability. Today that is not the case. Judicial decisions and legislative action have placed unexpected financial burdens on the insurance industry by creating endless retroactive and expanded liability for the insurance market.

While this may be well intentioned, these decisions have been misguided. Unreasonable pressure on the industry to solve America's pollution problems has dried up the pollution liability market which provides part of the coverage required by the Motor Carrier Act. Over the past 18 months, pollution coverage has almost completely disappeared.

Another force exerting pressure on the insurance industry to withdraw from all pollution-related markets is the international reinsurance community. Recently, reinsurers have advised the U.S. market that they will not provide reinsurance for any company that continues any form of pollution liability coverage after January 1, 1986.

Reinsurance is vital to the operation of the primary insurance market.

Senator Packwood [presiding]. I will have to ask you to conclude, Mr. Shea.

Mr. **Shea**. All right. I have a summary here. We suggest the following actions be taken to relieve some of the problems:

One, limits of financial responsibility under the Motor Carrier Act should be reexamined to see if they are helping or hindering the protection of the public.

Two, safety standards for the hauling and cleanup of hazardous cargoes should be reviewed. The standards should be incorporated in a public awareness campaign for truckers, the public and municipal cleanup teams.

And three, we urge Congress to examine how judicial decisions are affecting all pollution-related legislation, such as Superfund, the Resource Conservation Recovery Act, and the Motor Carrier Act.

Thank you.

[The statement follows:]

Statement of Thomas S. Shea, of the National Association of Professional Insurance Agents

Mr. Chairman and Members of the Surface Transportation Subcommittee of the Senate Commerce, Science, and Transportation Committee:

I am Thomas S. Shea of Schwartz & Shea Insurance Agency, Inc., in Janesville, Wisconsin. I am Vice President of the National Association of Professional Insurance Agents (PIA) and Chairman of PIA's Market Advisory Committee.

PIA is a national trade association representing more than 40,000 independent insurance agents and brokers having expertise in the property-casualty insurance fields. Our members are independent businessowners with staffs averaging five employees. These agencies operate in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.

PIA has closely followed the implementation of the Motor Carrier Act of 1980 (MCA), and taken an active role in educating our membership and clients. Our credentials in this area are well documented. PIA has chaired the National Association of Insurance Commissioners (NAIC) Advisory Committee on Hazardous Waste; conducted pollution liability workshops/panels for AIA, National Association of Independent Insurers (NAII), our own national state associations, National Association of Casualty and Surety Agents (NACSA), to name a few; authored numerous articles in several trade publications on the subject (National Underwriter); conducted a national teleconference on the implementation of the Motor Carrier Act of 1980; published several information guides; issued a recent video tape on the market problems now affecting the Motor Carrier Act; submitted statements before Congress, the Department of Transportation (DOT) and Interstate Commerce Commission (ICC); worked with agency staffs in answering their questions; and worked with state legislators.

In addition to our activism in communicating the many issues and implications herein involved, our trade as independent insurance agents and brokers has allowed us to view first-hand the ever changing impact of these matters upon the insurance marketplace. PIA appreciates this opportunity to come before you to discuss the problems associated with this Act and amendments thereto.

As the Subcommittee has previously heard, there are problems in securing the kinds of insurance coverage necessary to properly comply with the provisions of MCA. These difficulties run the gamut from a total absence of available coverage to some limitations on the insuring conditions and limits of liability to staggering costs when some form of coverage is available. Regardless of size, to our knowledge all transporters have been affected.

PIA became aware that such problems were beginning to surface as early as April of 1984. In doing the research for a special issue of our trade association publication, the Professional Agent our writer spoke with several key agent/members who then advised the market for this line of business was tightening. These market observations and warnings of increased severity were shared with DOT in PIA statements submitted on the Act and its limits of liability.

There are several factors causing this market dilemma: overall capacity problems in the general liability market; the perception that transporters are operating under increasingly unsafe or marginal conditions because of deregulatory pressures; and insurance industry trepidation with lines of insurance containing any form of pollution liability.

1. *Capacity Problems.*—The insurance industry has recently ended a six-year predatory pricing war. The long-term effect of inadequate rates and increasing loss ratios has finally surpassed the ability of this industry to recover by wise investments. Without sufficient capital, the industry cannot meet the demands of the market. Unlike previous tight market periods, this lack of capacity is a worldwide situation affecting the international reinsurance market as well as the U.S. domestic admitted and non-admitted markets.

The results of limited capacity are: (a) Lines of insurance which traditionally are marginally profitable are either cut back or eliminated depending upon the insurance carriers' abilities. Such is the case for commercial auto and garage keepers liability, the two coverages needed for MCA. (b) When available, and regardless of how limited the coverage offered, prices are increased. This brings needed capital in to meet the rising loss ratios.

2. *Loss Experience.*—We need only look to the news headlines of the last several months for examples of accidents involving hazardous materials and transporters. Studies such as the one done for the Capital Beltway report a disproportionate number of trucks are involved in Beltway accidents. While the merits and validity of such statements and studies are challenged by the transport industry, the perception is that economic pressures are forcing trucking concerns to operate on the edge.

Hard data on loss experience takes some time to develop within the insurance rating structure. Therefore, insurers will exercise extreme conservatism in underwriting when preliminary loss information may indicate a possible negative loss trend. Additionally, technology in handling spills and understanding what are the short and long term effects from such accidents are still evolving. Insurers prefer to fully understand the nature and scope of the risk being insured. Such is not entirely the case with this type of coverage. The net result is a shying away from this line of business until things settle.

3. *Environmental Restoration.*—Our June 1984 magazine article reported that the insurance industry was struggling to provide a market for pollution liability. Today that is not the case. Judicial efforts and legislative action have created endless retroactive and expanded liability for the insurance market. While well intentioned, these decisions have been misguided. Insurance policies are being manipulated to pay for losses never intended to be covered nor for which any premium was ever collected. Consequently, the international reinsurance community has advised the U.S. market it will not provide reinsurance for any company that continues any form of pollution liability covereage after January 1, 1986. Reinsurance is vital to the operation of the primary insurance market. [The MCA requirement for Environmental Restoration (ER) is considered a line of pollution liability. Hence, insurers must pull back from the market if they are to secure vital reinsurance upon which all of their operations depend.]

As insurance technicians, we realize that time is needed for the insurance industry to work out its problems. We believe a normal market can once again exist. However, as providers of services, we realize our clients immediate coverage needs cannot wait. PIA has undertaken discussions with company executives to identify ways in which markets may be opened. Answers to the capacity, rate and loss problems are relatively simple when compared with the difficulty of finding an acceptance for ER coverage.

PIA is willing to work with trucking representatives, insurance company representatives, Congress and state regulators in seeking a solution. We suggest the following as a beginning agenda. (1) The limits of financial responsibility under MCA should be reexamined to see if they are helping or hindering the protection of the public. (2) Safety standards for the hauling and clean-up of hazardous cargo should be reviewed. These standards should be incorporated in a public awareness campaign for truckers, the public and municipal clean-up teams. (3) Congress in the context of all pollution related legislation (Superfund, RCRA, MCA to name a few) must examine the civil justice impact of their requirements.

Again, we appreciate this opportunity to provide a glimpse of the market problems. We will be happy to answer any questions and/or provide further information upon request.

Thank you.

Senator Packwood. Thank you, sir.

Mr. Dols.

Mr. Dols. Senator Packwood, Senator Exon:

I am Bob Dols, commercial auto market manager for Northland Insurance Co. of St. Paul, MN. I am appearing today on behalf of the NAII, the National Association of Independent Insurers, which was requested to appear before you to talk about the insurance availability and affordability issue as it respects motor carriers.

The NAII is a national property casualty insurance trade association with more than 500 member companies, several of whom write substantial amounts of liability insurance for motor carriers.

The Northland Insurance Co. along with a number of member companies, are categorized in the insurance industry as being specialty insurers, in this case having chosen to specialize in the insurance of predominantly long haul trucking operations.

The statement entered into the record was prepared by Mr. Jim Blanton, president of Carolina Casualty, another motor carrier insurance specialty company. Mr. Blanton is chairman of the NAII's truck committee, but was unable to attend today's session.

I would like to take a few moments to briefly summarize our statement. By this point in your investigations, I feel that you are aware of many of the factors that have come together to create the current situation. To briefly recap, in our view they are the higher limits, the trend toward a so much more litigious society, accompanying proliferation of large damage awards, and the dramatic constriction and increases in costs of reinsurance for the primary insurance market.

I understand that your orientation is to try and seek solutions to the current problem. The insurance industry is trying to correct a problem of its own, the magnitude of which has never been dealt with before. The current situation was 5 years in the making and the correction process will take time, hopefully not as much.

But there are in my opinion no readily apparent short-term or quick fixes to the industry problem or to the motor carrier insurance availability and affordability problem.

It should be pointed out that deregulation of the motor carriers as provided for in the Motor Carrier Act of 1980 has in my opinion had an impact in helping to create this problem. In testimony before this committee on September 9, 1985, Reese Taylor, Chairman of the ICC, identified two of the primary contributing factors:

First, the increase in normal level of coverages that carriers must maintain; and second, the continuous increase in the total number of carriers in the regulated universe, which has put significant strains on the insurance industry in terms of providing additional coverages for these new ventures.

It is clear to our company that these new entities are not all equally equipped to provide safe motor transport services. To further deregulate and to dismantle the ICC, as has been recommended, would not necessarily improve this situation.

The role they are currently playing in making sure that at least minimum insurance coverages are placed could in my opinion go unattended, and there would undoubtedly be a significant number of motor carriers attempting to operate without the benefit of liability coverages. That would clearly not be in the public's best interest.

Our industry must shoulder a large piece of responsibility for the deterioration of pricing during the early eighties. Companies such as ours, which resisted soft market price cutting, saw major declines in our business and resultant financial difficulties over the last 5 years. As I mentioned, the short-term solutions to the problem are not readily apparent.

Clearly, one area that the Federal Government could take action on is the review and perhaps the reduction on a temporary basis of the minimum limits of liability coverage. This would allow segments of the trucking industry to perhaps better absorb the costs of insurance.

As respects availability, it is certainly clear that there are a good number of specialty insurers who are ready, willing, and desirous to serve motor carriers. Unfortunately, the fact of life is that these insurance companies collectively do not have sufficient capacity to absorb all of the risks that are looking for coverage.

The use of assigned risk pools is on the increase in many States, and it is obvious that a good number of trucking firms will have to resort to those mechanisms for coverage on a short-term basis.

Only through the restoration of financial stability to the insurance community as a whole are you going to see a long-term resolution of the problem as it affects truckers. It is my opinion that many of the specialty markets have progressed toward improved results due to more adequate levels of premiums and increased attention to underwriting detail. As that trend continues, the situation should improve.

Mr. Blanton, who prepared the statement, and others have pointed out serious problems relative to the control of claims costs. These are dependent largely on a legal system and a societal view that views insurance companies as vast pools of money, not unsimilar to a lottery, and that perception ignores the obvious, and that is that the money comes from consumers of our products and not great coffers of our money that we print in our basements. The change of this perception is going to be a long and difficult endeavor, but one that is essential if insurance is to be provided by the private sector.

I appreciate the opportunity to appear before you. Thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Mr. Chairman and Members of the Committee, I am Robert M. Dols, Commercial Auto Market Manager for Northland Insurance Company of St. Paul, Minnesota, appearing on behalf of the National Association of Independent Insurers.

NAII is appearing here today in response to your letter inviting us to comment on insurance issues which were raised at your recent oversight hearing on the Motor Carrier Reform Act of 1980.

NAII is a national property/casualty insurance trade association with more than 500 member companies, several of whom write a substantial amount of liability insurance for motor carriers.

The Motor Carrier Act of 1980 mandated policy limits to be written by insurance companies for truckers. These limits are now $750,000 for ordinary truckers, $1,000,000 for the middle range of hazardous hauling, and $5,000,000 for the most hazardous haulers. This is the first time that the United States Congress has mandated insurance limits for any class of business written by the insurance industry.

The assumption that insurance costs to the truckers would not increase radically as a result of the mandating of high limits was wrong. This assumption was based upon rates which prevailed in 1981 which were artificially low because of a highly competitive business cycle in insurance. Many insurance companies, attracted by large premium payments in the area of trucking, attempted to increase their writings of trucking business by cutting rates. Most of these insurers have left the trucking market entirely in the past two years.

The basic theory of insurance involves the spreading of risk among a pool of contributors, not all of whom will sustain losses, so that enough money is generated by the group to pay the losses of the few. In the liability area, the extent of the losses is dictated by the rules of the tort system. Where the tort system permits recovery, insurance carriers must pay.

The price charged for trucking insurance has in many instances doubled, even tripled this year because the claims paid by insurance companies have escalated to a point of monumental losses sustained by the insurance industry in 1984 and projected for 1985.

The current predicament of the trucker seeking insurance is a direct result of artificially low rates resulting from a highly competitive atmosphere in the early 1980's, coupled with a radical change in the tort system, which now seeks to provide indemnification of all losses virtually without regard in many instances to considerations of fault.

Prior to 1981, the common limit of insurance carried by truckers was that required by the Interstate Commerce Commission, $100,000/$300,000/$100,000. This meant that the maximum amount an insurance company would pay to an injured claimant would be $100,000, and the maximum amount that an insurance company would pay on any one claim involving multiple claimants was $300,000. The rating structure was based upon this assumption. Coverage above these amounts was obtained through purchasing excess and/or umbrella policies, and the rate charged for insurance above the $100,000 basic coverage was not a heavy one. However, when the mandated coverage became $750,000, ranging up to $5,000,000, rates had to be restructured to provide these amounts as basic coverage.

Plaintiffs' lawyers quickly recognized the implications of these mandated limits, and claims which previously had been settled for the $100,000 policy limit were now valued at much higher sums. In many instances, this was in order and represented a proper and just outcome. The insurance industry does not object to paying claims it owes to protect its customers but, combine these higher limits with a deterioration in the defenses available to defendants in lawsuits and changes in the basis of compensation legislated by the states or ordered by the courts, and you have a system out of control.

In virtually all of the venues with which insurance carriers must deal, the law of joint and several liability prevails. This holds that where there are multiple defendants, and liability is apportioned among them, if a defendant is found to be as much a 1% liable, a plaintiff can elect to collect its entire verdict from the defendant, regardless of the fact that other defendants may be in major part responsible for the damages. Thus, cases which in prior years would have been defended successfully with a jury awarding a plaintiff nothing from a defendant who was responsible only in a minor respect for the injuries sustained, now result in very large exposures to these relatively innocent defendants, especially if the defendants have a lot of insurance. When joint and several liability is coupled with the law of pure comparative negligence (and this is done in several of the states), the insurers of truckers find themselves paying hundreds of thousands of dollars on claims for which their insureds are responsible, if at all, only in a minor way.

Insurance companies do not print money, nor can they engage in deficit financing. As they have seen their capital and surplus eroded by huge losses, the market has changed. Indeed, many insurance companies previously in the market have withdrawn compelety, and have indicated that they will not return to the writing of trucking business.

It should be said that this situation prevails not only with respect to trucking insurers, but also with respect to insurance companies writing general liability insurance on municipalities, manufacturers of products, chemical manufacturers, and pharmaceutical manufacturers. The entire commercial American insurance market has been buffeted by losses which have caused foreign observers to pale and shrink back. The *New York Times* of September 6, 1985, on page 38, reported that Lloyd's of London had "suffered their worst loss in nearly three centuries in 1982", and that Lloyd's underwriters warned that they "might have to withdraw from the American insurance market unless there was a reform of United States liability law." One of the biggest reinsurers of American trucking insurance until this year was Lloyd's of London. They no longer accept this business.

While the insurance industry as a whole is moving toward stronger pollution exclusions in general liability coverages, the Department of Transportation endorsement now a mandatory part of a trucking insurer's policy provides coverage, and as the Commercial Carrier Journal of July, 1985 puts it, the Resources Conservation and Recovery Act of 1984 "greatly increases the liability of motor carriers for environmental conditions and accidents."

The rates charged for trucking insurance in 1981 did not contemplate this kind of an exposure any more than they envisioned the impact of the change in the tort system and the higher limits of liability mandated by the Motor Carrier Act of 1980.

Thus, inadequate rate and a deteriorating tort system have created a situation causing many insurance companies to withdraw from trucking insurance altogether. Those who remain have had to re-think their rating and their claims policies, without regard to past history. In anticipation of burgeoning jury verdicts for bodily injury claims and environmental exposures—verdicts which are reported every day in the public press—insurance companies have increased rates and are contemplating sharp revisions in coverage provisions as an alternative to bankruptcy.

It is totally unrealistic for any businessman to reduce price at a time when costs are skyrocketing. It would be suicide for the truck insurer to maintain artificially low premium levels in the face of increased exposure in terms of limits mandated by the United States Congress and escalating claims payments mandated by the court system.

Mr. Peter Miller, Chairman of Lloyd's of London, is described by the New York Times article cited as calling for "more realistic insurance premium rates, reformed wording on liability policies, an overall limit on claims, and some reform of liability law." This would appear to be a minimum recipe for a return of sanity in our insurance market.

The insurance industry is not gouging its insureds. It is not looking for windfall profits, or attempting to create a situation in which its profits can be maximized without regard to the interests of its customers. It is merely reacting to the situation as it exists. It is a simple matter of basic fact that in order to create the pool of money required to pay the claims presented, those among whom the risk is spread must pay higher premiums. The alternative is the destruction of the American insurance market as we know it, and an ultimate demand on the part of the insuring public that government take over the function and pay its costs. We continue to believe that the American private sector has a much better record for prudent management of income and outgo than government.

Northland Insurance Companies,
St. Paul, MN, November 12, 1985.

Hon. Bob Packwood,
Committee on Commerce, Science, and Transportation, Surface Transportation Subcommittee Washington, DC.

Senator: On behalf of the National Association of Independent Insurers and Northland Insurance Company, I would like to thank you for the opportunity to appear before the subcommittee hearing on September 20th. It is my hope that the testimony that we gave will in some measure help you to more clearly understand the insurance industry's difficulties in general, and specifically as they relate to motor carriers.

I reviewed the questions and have prepared a response which will hopefully give you the information you are seeking as you attempt to develop a more comprehensive view of the current problem and hopefully formulate some solutions that are equitable.

The first question raises the issues of whether or not the Department of Transportation should have the authority over minimum limits of liability coverage. As the law is currently framed, it is my understanding that to alter the limits would require another law being passed by congress. That is a rather cumbersome approach to the issue. It would seem more reasonable that the Department of Transportation be given the authority to establish limits both upwards or down from the existing level as conditions change.

In my testimony, I indicated that one action the federal government could take to affect a short term remedy to the current availability/affordability problem is the reduction of mandatory liability limits. Lower limits would allow insurance carriers to utilize existing capacity to accommodate more individuals from the same pool of policy-holders surplus. In my view, this would be an extension of the phase in provision of the Motor Carrier Act.

It is very difficult to select a dollar amount of coverage that is reasonable in all instances, since determining the economic value of human life is a difficult issue to tackle.

From the view of the injured party, the amount that is sought in injury cases is likely to be an amount equal to that which the insured person could conceivably earn during the normal lifetime. Using that logic, it is not unreasonable to ask for recovery of $750,000 to $1,000,000, based on current income levels.

From the insured's point of view, what is sufficient protection varies with the level of exposure to loss. It is obvious that larger motor carriers need higher limits to protect their assets. Those operators who have nothing more than their tractor/trailer certainly need protection, but I don't know that it is realistic for them to be subject to the same requirements.

It is also clear that certain commodities have greater potential for harm than do others. Some distinction between hazardous and non-hazardous materials and their level of financial responsibility is desirable, but how much difference in terms of dollars cannot be reasonably assessed. The higher limits, in my opinion, have and will continue to encourage inflated loss costs and consequently, larger settlements.

To temporarily reduce insurance requirements should not materially alter the level of protection afforded the public. The fact of the matter is that most of the larger motor carriers already carry insurance to levels that go beyond those currently mandated by the Motor Carrier Act. The problem, and thus the impact, affects primarily the smaller fleet operator and independent owner/operator to a much greater degree.

It is our feeling that the minimum level of protection would be those limits that were in effect prior to January 1, 1985. Northland Insurance Company's experience under those limits would tend to indicate that the vast majority of losses presented to us can reasonably be handled with those limits of protection afforded to our insureds.

In your second question, you asked for specific actions that might be taken to remedy the situation in both motor carrier and insurance industries.

As I stated in my oral testimony, I felt that the return to profitability of the insurance industry will, over time, stabilize and improve the availability and affordability of motor carrier insurance. Allowing us the time to put our house in order is critical. We have seen various insurance departments around the United States take actions, issue directives, that many would term reactionary to the extent of being overkill. We hear of many committees of the Congress of the United States undertaking to investigate the insurance industry. It strikes me as being very odd that on the one hand, your talking about deregulating the motor carrier industry, while on the other hand there are proposals to take a more active role in regulating insurance. It is not the insurance industry which created the losses; it is the motor carriers who have the accidents and we are here to pick up the pieces.

Attention to regulating reasonable insurance premiums should be given as much attention in "soft market" conditions as in times such as we are in now, which we consider the "hard market" conditions. There was little or no activity on the part of various state insurance departments when consumer prices were going down. There was also a noticeable lack of action against companies whose business practices resulted in dramatic weakened financial positions. Perhaps as a result of this turn in market conditions, various insurance departments will again recognize that their responsibilities don't start when a consumer picks up the phone to criticize the rate increase, rather their ongoing obligation to ensure a healthy industry.

I think the state regulatory mechanism can work. I don't believe that there is a need at this point for federal intervention in this area. As I stated earlier, given time the insurance industry will work itself back into a position of reasonable profitability and the issue of availability and affordability will be resolved.

In our written testimony, we touched on the fact that in many instances, motor carrier insurance responds to economic loss based on social need as opposed to real negligence on behalf of the truckmen. The courts have operatd through the "theory of the deep pocket" in awarding injured parties settlements when other sources of recovery have been exhausted or are not there. The need for reform of our tort system is clear. There is also a significant disparity between the limits of liability required of motor carriers and those of the general motoring public. It may be reasonable for governmental agencies to look into this disparity and suggest revisions to minimum insurance limits for all motor vehicles.

The motor carrier industry is, and will continue to undergo change. The further deregulation of this industry will not provide the kind of environment where insurance costs will quickly stabilize. I think that it is safe to say that stabilizing deregulation at this point in time may, in fact, help the motor carriers and allow the insurance industry to adjust to the new realities of a more competitive motor carrier industry.

To further encourage cut-throat competition will, in our view, lower standards of service and further the deterioration in safety. Reduced budgets for safety enforcement by the Bureau of Motor Carriers Safety and other governmental agencies are an insult to the intelligence of the public. Without adequate funds, it is impossible for those in charge of enforcement to do their job adequately.

It is clear to us in the insurance business that much of the responsibility for gauging the quality of driver on the road is our responsibility. That has been abdicated by government due to the lack of an effective motor vehicle record system. The National Driver Registry is an ineffective tool at this point in time. Perhaps it is worth considering a mechanism that would assure one driver license per commercial driver and require accident/moving violation information be exchanged among the states. This would at least give us one tool for identifying problem operators and helping to keep the public safe by not letting them operate commercially.

We appreciate the opportunity that you presented us to participate in your subcommittee's activities.

Sincerely,

Bob Dols,
Commercial Auto Market Manager.

Senator Packwood. Thank you.

In the writing of this kind of liability industry, have you always presumed that the premiums in and of themselves should pay for the benefits, or how much did you presume you could pay for out of investments and still make a profit and write the premiums at less than the costs that you are going to have to pay out?

And I might start with Mr. Kimble.

Mr. Kimble. I do not think that there is a magic formula for including investment income in your ratemaking procedures. There is a 5-percent profit factor built in, but that certainly does not reflect investment income. It is clear, however, that in setting rates the potential for investment income has been considered.

There is an advisory rate which has been offered by a group called the Insurance Services Office, which is the property casualty insurance industry's principal ratemaking advisory organization. And for years the commercial auto insurers have deviated downward from that advisory rate, discounted from that advisory rate.

In fact, the other day the ATA characterized our insurance premiums in the eighties as a bargain. So certainly, the awareness of the potential for investment income is taken into consideration, but I do not think there is a formula for its application or use.

Senator Packwood. In either yours or Mr. Shea's statement—I cannot find it right now—one of you said there are any number of companies that, right after deregulation, went out and attempted to write and were writing at very low premiums, and they have now gotten more or less out of the business.

Which one of you said that?

Mr. Shea. I probably referred to that in my statement. I do not think there is any question that 4 or 5 years ago there were companies that were in the business simply to develop the rates because there was a rather substantial investment income that was available to them. This was shortsighted.

I think, as Mr. Dols has pointed out, the end result of that, of course, is that 2 or 3 years later the losses come in and there are not adequate funds to pay those losses. I do not think there is any question that that has taken place. Those companies are no longer in this insurance market. That is one of the reasons for the availability problems.

Senator PACKWOOD. How much of your problem is coming from the changing of the concept of tort law and the extraordinary greater judgments that are being rendered? You read about them and I understand they are big. But how much of a percent, how much of a factor are they?

I have got to assume—and I have no idea—but 99 percent of insurance payments have nothing to do with lawsuits, and they are paid out routinely based upon damage, that you and the insured normally reach some rational conclusion. Am I wrong?

Mr. SHEA. Well, I think you are correct to the extent that there is perhaps some rate adequacy from the standpoint of what insurance companies know has happened. But however, I think they fear that, because of the increased awards and the increased perception that the scope of coverages can be expanded through the courts, that they have to put a factor in to cover themselves if they want to remain solvent.

I do not think there is any question that that is a part of this problem.

Senator PACKWOOD. Does it also cause them perhaps to reach settlements other than they otherwise would reach, because they do not want to go to court—they have seen some of the higher verdicts and they are afraid they may get dragged into that?

Mr. SHEA. That is a problem.

Mr. KIMBLE. I would like to repeat some of my earlier testimony. There are three categories of damages in the Motor Carrier Act: bodily injury, property damage, and environmental restoration.

Bodily injury and property damage we understand. We know what those terms mean. They have been defined and interpreted in the courtroom. Environmental restoration, we do not have the slightest idea what it means.

You have been occupied this afternoon with Superfund. Pollution exposures for the insurance industry are a nightmare. The motor carriers are subject to Superfund. They are included in the definition of a "facility." Our policies associated with Superfund cleanup have been badly misinterpreted in the courtroom.

Beginning with Jackson Township, there have been a series of about a dozen cases and, very briefly, if you put them together in a collage what you have is a situation in which a policy which was designed to respond to sudden and accidental events, a fire or an explosion, and respond to bodily injury and property damage off the site has been used to respond to nonsudden onsite cleanup.

So all of the words of art are antithetical. We did not collect any premium in anticipation of paying for Superfund cleanup onsite. That was never our intention in this particular insurance policy. Nevertheless, because of the term "environmental restoration" in the Motor Carrier Act, the same concerns we have associated with Superfund and this other policy, the general liability policy, has caused a ripple effect associated with the commercial auto policy.

Environmental restoration clearly is a form of pollution coverage or pollution liability exposure. We have had a terrible experience with respect to Superfund in the general liability policy. We are very concerned about environmental restoration in the commercial auto policy.

Senator PACKWOOD. Senator Exon.

Senator EXON. Mr. Chairman, just one question.

It has been my impression—and maybe I am wrong—that the tort claim awards have leveled off somewhat. There may be more of them, but are we not seeing generally less and less of what some people generally refer to as significantly excessive settlements in the courts?

Has that not leveled off some, or am I wrong? What is your answer to that?

Mr. KIMBLE. No, it has not leveled off. If you look at the exhibits attached to my statement, you will see that there are charts which clearly indicate that the losses have increased yearly.

Senator EXON. Is it both the number of claims and the amount per claim?

Mr. KIMBLE. I am not sure if I can respond to that.

Senator EXON. Are you following me?

Mr. KIMBLE. Yes, I am.

This is a guess, only a guess. I believe that both frequency and severity of claims has increased, but I am not sure. And I will make every effort to get that for you.

Senator EXON. Would Mr. Shea and Mr. Dols know the answer to that?

Mr. DOLS. I can respond for our company. I can tell you that over the last 5 years what has taken place has been a rather dramatic increase both in the area of frequency and severity as it pertains to our segment of the insurance world, and that is the long haul truck men.

We have got a problem here where, going back to preenactment days, you had a standard ICC-mandated limit of 100, 300, and 100. So you had a split limit set up, a maximum of $100,000 per person, $300,000 bodily injury per occurrence, and $100,000 of property damage.

The first level of insurance change that came about with the law's enactment was going to a $500,000 combined single limit. That means $500,000 is available per occurrence for the payment of all bodily injury and all property damage. Any one individual could recover up to $500,000.

So what has happened is that in general the courts are aware and the attorneys are aware that this amount of money is available, and certainly there were economic losses prior to these higher limits that were well in excess of $100,000, but the awards were limited to what was available for our insurance purposes.

Now, with the addition of another $400,000, fine, many of these losses that were previously capped were now being paid. What happened to our company over the last 2 years was that, as even higher limits came into commonplace usage—the million dollar single now is a standard for a certain element of the truck community.

But we were selling million CSL's last year and we got caught on two situations where damages to individuals exceeded that amount. We were forced to pay two $1 million losses. Those are the first two we had ever had. We hope we do not see too many more.

But you have to recognize that the damage that these tractor trailers inflict on the human body is rather substantial.

Senator EXON. Thank you.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you, gentlemen. Thank you very much.

Now, if we might have Mr. John Archer, managing director, Government Affairs Department of AAA.

STATEMENT OF JOHN ARCHER, MANAGING DIRECTOR, GOVERNMENT AFFAIRS DEPARTMENT, AMERICAN AUTOMOBILE ASSOCIATION

Mr. ARCHER. Thank you, Mr. Chairman.

Senator PACKWOOD. We are happy to have you with us. Sorry to have made you wait all day.

Mr. ARCHER. AAA serves more than 25 million members and appreciates this opportunity to comment on trucking safety issues.

Every 2 hours a pedestrian, motorist, or other highway user is killed in an accident with a large truck. That is why AAA strongly believes that truck driver licensing should be tightly controlled and large trucks should never be allowed to use roads for which they were not designed, regardless of the alleged economic justification.

Unfortunately, today in many States if you pass the regular motorist's licensing test in your compact car you are then entitled to drive a tractor semitrailer truck nationwide and a tandem trailer truck in every State except Connecticut.

If you do manage to lose the license, in many instances the current system ensures your opportunity to have several other licenses as well. Indeed, the typical interstate trucker can easily spread the traffic violations he commits over a number of licenses, thereby assuring his rating as a good driver regardless of the number of violations he might have.

To help rectify this problem, AAA advocates the establishment of a national licensing procedure for drivers of combination trucks and all other trucks with a gross vehicle weight of 50,000 pounds or more. We believe that the Congress should direct the Department of Transportation to study the feasibility of such a licensing system.

The need for such a license is readily perceived by the public. In a national poll 77 percent of the respondents expressed agreement that the Federal Government should change licensing procedures and issue a single national truck driver's license.

AAA also urges this committee not to expand the concept of reasonable access, particularly as it relates to the 48-foot trailer. We have a film prepared by the California Department of Transportation which demonstrates the acute off-tracking characteristics of this trailer and the problems it poses for other highway users.

Because of time constraints, we can only show a short portion of the film. I want to emphasize, however, that we would be delighted to show the entire film to any Senator or staff member on demand.

What you will see in this brief film clip is the off-tracking that occurs when a 96-inch-wide, 48-foot-long trailer used on interstate exits built to old design standards and when used on highways with narrow travel lanes. The highway shown at the end of the film is U.S. 49, part of the Federal primary system in California and heavily traveled by commercial trucks.

With your permission, Mr. Chairman, we will roll the film.

Senator PACKWOOD. Go right ahead.

[Film was shown.]

Mr. ARCHER. Thank you, Mr. Chairman.

In closing, I would like to make one more simple point. We hope very much that when you consider the trucking industry's request to expand the access for 48-foot trailers that you would consider this film and ask yourself one question: Would you like to see a truck or would you like to meet a truck with a 48-foot trailer on a road like the one shown in the film, on a snowy, icy night? We think the answer should be no.

Thank you.

Senator PACKWOOD. Thank you very much.

How long is the entire film?

Mr. ARCHER. Approximately 15 minutes.

Senator PACKWOOD. Why do you not give me a cassette of it if you can and I will take a look at it.

Mr. ARCHER. Thank you.

Senator PACKWOOD. Thank you, and I have no questions. Thank you, again.

[The statement follows:]

STATEMENT OF JOHN ARCHER, MANAGING DIRECTOR, GOVERNMENT AFFAIRS DEPARTMENT, AMERICAN AUTOMOBILE ASSOCIATION

I am John Archer, Managing Director of AAA Government Affairs. AAA, serving more than 25 million members, appreciates this opportunity to coment on trucking safety issues.

Every two hours a pedestrian, motorist or other highway user is killed in an accident with a large truck.[1] That's why AAA strongly believes that truck driver licensing should be tightly controlled and large trucks should never be allowed to use roads for which they were not designed regardless of the alleged economic justification. Safety must always take precedence over the concerns of commerce.

Unfortunately, today in many states if you pass the regular motorist licensing test in your compact car, you are entitled to drive a tractor semi-trailer truck nationwide and a tandem trailer truck in every state except Connecticut.[2] If you do manage to lose a license, in many instances the current system ensures your opportunity to have several other licenses as well. Indeed, the typical interstate trucker can easily spread the traffic violations he commits over a number of licenses, thereby assuring his rating as a "good driver," regardless of the number of violations he has committed.

NATIONAL TRUCK DRIVER LICENSE

To help rectify this problem, AAA advocates the establishment of national licensing procedures for drivers of combination trucks and all other trucks with a gross vehicle weight of 50,000 pounds or more. A single national truck drivers' license would eliminate the multiple licensing problem and help ensure that individuals receive adequate training and experience in safely operating large trucks. We believe that Congress should direct the Department of Transportation to study this issue and report on the feasibility of such a licensing system.

Considerable discussion has surrounded the possibility of the creation of a new federal trucking administration within the U.S. DOT. Should Congress mandate such an administration, we strongly believe that part of the Act incorporating the agency should mandate establishment of a national truck driver license.

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[1] 1983 Fatal Accident Reporting System (FARS) Data reveals that medium and heavy trucks accounted for 5,475 fatalities during that year. In all, 82 percent of those fatalities were people other than the truck driver or other occupants of his truck. This means that every 2 hours a truck is involved in a fatal accident where someone other than the truck driver (or occupant in his truck) is killed.

[2] Development of Knowledge and Performance Tests for Heavy Vehicle Operators, Volume 1: Development and Field Test (December 1984 Final Report DOT HS-806 688) Study by National Public Services Research Institute for NHTSA Pages 17-20 and Appendix B.

A federal trucking administration and its licensing system could be structured much like the Federal Aviation Administration (FAA) and its national pilot licensing system. The principal purpose of the FAA is to guarantee the safety and mobility of air travelers, not to serve airlines. It accomplishes part of its safety objective through national licensing standards for pilots; a federal trucking administration should do no less for highway users through a national truck driver licensing system.

As alluded to earlier, one of the major deterrents to removing careless or reckless commercial drivers form the road is the ability of such drivers to secure multiple licenses. Possession of an array of licenses permits the driver to spread convictions of traffic violations over several licenses, delaying potential revocation of any one license, or permitting him to continue driving after revocation takes place.

A national drivers' license issued to operators of large vehicles would do much to eliminate such high risk drivers. Just as a commercial pilot is effectively grounded when the Federal Aviation Administration suspends or revokes his pilot's license, so also should a commercial vehicle operator be "grounded" when traffic violations are so serious or so frequent that license suspension or revocation action is warranted. Effective control of the interstate operator can never be fully accomplished so long as authority and responsibility are divided among multiple jurisdictions. For instance, over half a dozen states require a non-resident to objtain a license if employed as a driver by a resident.[3] This not only encourages but mandates multiple licenses.

Unlike the Interstate trucker the pilot carried only one license. On it is recorded the type of equipment he has proven qualified to operate and the conditions under which he may operate the equipment. A pilot licensed to operate a single engine aircraft may not operate as pilot in command, a multiengine aircraft, a glider or lighter-than-air craft unless his airman's certificate (license) is endorsed for such operation. To receive such endorsements the pilot must pass written, oral and practical tests demonstrating his competency to operate the equipment under the conditions outlined.

While we are not suggesting that the requirements for truck drivers' licenses should be as strict as those for aircraft pilots, it is interesting to note that there were 35 fatal accidents involving air carriers in commercial aviation in 1983, resulting in 93 fatalities. During the same year there were 3,312 fatal accidents involving combination trucks in which 3,993 people died.

In contrast to the stringent requirements for pilot licensing, to the best of our knowledge only seven states require that a driver of a combination truck driver actually demonstrate his competence to maneuver such equipment in a state-administered test.[4] Only one (Connecticut) requires that twin-trailer deivers demonstrate ability to maneuver this type of equipment. We are not aware that any state requires any special training for truck drivers hauling hazardous materials.

Is it too much to expect the operators of heavy combination trucks to be required to demonstrate ability to operate the equipment they are licensed to operate? We believe the driving public is entitled to such safeguards. Failure of the states to adequately provide such minimum safety standards argues for the imposition of a federal requirement—a national truck driver's license.

The need for such a license is readily perceived by the general public. A national poll to obtain information and consumer attitudes toward truck driver licensing procedures was conducted for AAA in July 1985. Fully 77 percent of the respondents expressed agreement that the federal government should change licensing procedures and issue a single truck drivers' license. Almost a third (31 percent) "strongly agreed" with the proposition. The extent of agreement among men and women was nearly identical, with 78 percent of male respondents and 77 percent of female respondents expressing agreement. AAA members were even more inclined to support a single national truck driver's license; 82 percent of AAA members supported the concept.

Attitudes varied slightly depending upon geographic location. Respondents from the Western region of the U.S. were most likely to agree that truck drivers' lilcensing procedures should be changed (80 percent). Respondents from the Central region were least likely to agree (75 percent). A copy of the report on this poll, providing additional detail, is appended to this statement.

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[3] Arizona, Arkansas, Florida, Idaho, Iowa, Oklahoma, Rhode Island, Tennessee, and West Virginia as per 1980 study by National Transportation Safety Board.

[4] California, Iowa, Massachusetts, Michigan, Texas, Utah, Wisconsin, 1984 study by National Public Services Research Institute for NHTSA.

AAA believes that a national truck driver licensing system would assure adequate training of truck drivers, and help put an end to the practice of a truck driver obtaining licenses in several states, so that if one state revokes his license he is still licensed in another state. A national truck driver's license will help eliminate unsafe truck drivers from our nation's highways, thereby benefiting all highway user groups.

REASONABLE ACCESS

AAA urges this committee not to expand the concept of reasonable access for the vehicles mandated nationwide by the 1982 Surface Transportation Assistance Act. Year after year we have heard the trucking industry moan that it has not received the productivity benefits "promised" in 1982. Yet only last year the industry gained major concessions in unlimited access for single 102-inch-wide, 28-foot trailers and erosion of the 12-foot travel lanes as a standard for inclusion of a highway in the National Truck Network.

Now just a year later the trucking industry is back before Congress claiming it needs a federal definition of reasonable access because a handful of states have limited access beyond the designated system to less than one mile or require a permit. Yet each of these states has specific road or traffic conditions making unlimited travel by the large vehicles mandated by the 1982 STAA inherently dangerous.

Any rule setting an arbitrary distance for access off the system, if applied nationwide, will fail to assess the individual characteristics of terrain, grading, lane widths, sight distance, horizontal curvature, bridges, traffic volume and vehicle mix, intersection geometrics, and the vulnerability of roadside hardware. These are the criteria for safety set forth by this Committee in its report accompanying the Tandem Truck Safety Act of 1982 for routes of travel by commercial vehicles of STAA dimensions. They should apply with equal validity to off-system access roads.

AAA fears that any uniform definition of access will preempt state police powers to safeguard public safety and rule out state attempts to make individual, on-site determinations of whether specific roads can safely handle longer, wider combination travel.

By the same token, AAA urges this committee to avoid any liberalization of access by adopting a definition of terminal which could be construed to include point of pickup to point of delivery.[5] Focusing upon the destination of the vehicle, not the route taken, presents a major departure from previous National Network policy and ignores all considerations of safety.

48-FOOT TRAILERS

AAA is particularly concerned about the use of a combination vehicle with a 48-foot trailer off the designated truck route network. This trailer can pose serious tracking problems because its turning radius substantially exceeds that commonly contemplated in highway design of past years. When a 48-foot trailer is operated on highways of the older design, the trailer will move out of its lane on curves and at intersections. This can result in collisions with vehicles in adjacent lanes (or destroy signs and other roadside hardware).

Today, we have a film prepared by the California Department of Transportation which demonstrates the acute offtracking characteristics of the 48-foot trailer. As you may recall from previous testimony, in 1983 California saw an 18 percent rise in truck-caused accidents even though truck mileage increased by only 5 percent that year.[6] California therefore has a significant interest at stake in actively enforcing regulations promoting truck safety.

This committee's Report (98–505) accompanying S. 2217, the Tandem Truck Safety Act of 1984, favorably cited Roadway Express testimony requesting the right to use the single 28-foot trailer as a local pickup and delivery vehicle instead of the standard 45-foot trailer. As the Report stated, the trucking industry maintained that both safety and productivity would be enhanced if the 28-foot single trailers were used in local pickup and delivery operations. The report also stated that as more carriers convert to the STAA-authorized equipment, single 28-foot trailers would replace the standard 45-foot trailer in pickup and delivery service, "thus resulting in significantly improved traffic conditions in local service as well as more economical and efficient motor carrier service to shipper and the consuming public through a reduction in freight handling costs" (emphasis added). What worries us at AAA is that liberalized access for 48-foot trailers will negate the very traffic improvements the committee hoped to achieve by the 1984 Act when 28-foot trailers were permitted to be used as pickup and delivery vehicles.

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[5] In our view, a terminal is a facility at the end of a carrier line with full freight loading and unloading capabilities and with freight storage capacity to hold items prior to delivery to a final destination. "Reasonable access to a terminal" is the right to travel on highways off the designated system to a terminal only if the route to the terminal can safely accommodate the vehicle.

[6] Motor Carrier Act of 1980: Oversight Hearings before the Senate Committee on Commerce, Science and Transportation," 99th Cong., 1st Sess. (1985) (statement of Frank W. Taylor, Jr., President, Transportation Lawyers Association).

It should also be stressed that broadening access for larger combinations where existing highways are inadequate will be expensive. Extensive ramp reconstruction and lane widening would be required in many states. In these times of deficits and projected Highway Trust Fund shortfalls, this cannot be taken lightly. Our first priority should be upgrading the designated system itself.

AAA would like to note its support for two other aspects of the reasonable access concept. First, some states have chosen to allow for exit from the truck network on a permit-only basis, and we support the right of states to take that approach in determining access. Indeed, with respect to the non-Interstate portion of the federal network, where a broad array of food, fuel, lodging, and repair facilities already exist, there is little justification for providing additional access on a non-permit basis.

Second, state and local officials should be allowed the flexibility to prohibit larger vehicles from exiting the federal network onto local roads. If a particular exit or group of exits of the network lead to one or more roads unsuitable for the larger trucks mandated by the STAA, state and local officials should be guaranteed the discretion to prohibit such trucks from using that exit or group of exits (except in emergency situations).

Moreover, if an entire segment of the trucking network adjoins an area unsuitable for larger trucks because of traffic mix, congestion, or for any other reason, state and local officials should have the option of prohibiting those trucks from exiting that highway anywhere along that segment of road. This "drive through" concept would allow interstate commerce to proceed while ensuring that the STAA's allowance for reasonable access could not be used to allow large vehicle combinations to travel roads on which they are unsafe.

In closing we acknowledge the value of the trucking industry to interstate and intrastate commerce. However, large combination trucks represent only 3.6 percent of all trucks and less than one percent of all motor vehicles using the roads. They are specialized vehicles performing specialized services and therefore do not belong on every road in the country. Rather, they belong only on those roads that can safely accommodate them. Safety should always take precedence over the desires of commerce.

Thank you for this opportunity to express our views.

American Automobile Association,
Falls Church, VA, November 20, 1985.

Hon. Bob Packwood,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: Thank you for the opportunity to participate in the September 20 hearing and for your further questions.

First, you asked how quickly a national truck driver licensing procedure could be implemented. I believe such a system could be in place within five years after passage of enabling legislation.

AAA is a member of the Alliance for Motor Vehicle Administrators' Telecommunication (AMVAT), a voluntary, non-profit, unincorporated association. One of AMVAT's principal objectives is the establishment of a national telecommunications network to provide instant record exchange between all state motor vehicle departments. After extensive consultation with state officials AMVAT has concluded that a commercial vehicle telecommunications network can be established according to the following timetable: (1) a one-year pilot study of the feasibility of a state-run, national computer network covering commercial vehicle operators; plus (2) five years to implement such a system nationwide.

I believe a national truck licensing system could be implemented within the same time frame, and perhaps sooner. A national licensing system would not require state-by-state adoption of computer systems and administrative procedures for the purpose of an integrated rapid communications network, such as that envisioned by AMVAT (though an interconnected, state computer network could be an important tool).

Instead, a national truck driver license would embody the one-license concept, require licensing test standards for each type of heavy commercial vehicle, and create a national license file, listing (at least) all heavy commercial vehicle operators in interstate commerce. An appropriate numbering system (including a Social Security number or other appropriate number and a unique identifier, such as fingerprints or retina identification) would also be necessary.

To be more specific, this system would require:

(1) adoption of the one-license concept—that is, only one license for each operator of heavy commercial vehicles;

(2) licensing standards for each type of vehicle a driver wishes to operate;

(3) an on-the-road test using uniform criteria for each type of heavy commercial vehicle a person wishes to be licensed for; and

(4) specific endorsement on the driver's license to permit operation of each particular type of vehicle if the test were passed. (For each type of vehicle opearted a separate test would have to be passed and a separate endorsement issued.)

In calling for a national license I am not suggesting that the federal government do any of the actual driver testing. Limited financial and manpower resources make that an impractical alternative for the foreseeable future. Instead, state would have the responsibility for testing according to federal standards.

I would like to stress that any effective reform of the commercial heavy vehicle driver licensing standards—even if implemented at the state level—will require federal legislation to:

(1) establish uniform licensing standards, by simply requiring the best state standards to be implemented and enforced nationwide; and

(2) waive provisions of the Privacy Act sufficiently to permit a system for personal identification of drivers, such as finger printing or retina identification.

Without federal standards, voluntary state attempts at reform are doomed to repeat the failures and frustrations of the National Driver Register and the Driver License Compact. The Driver License Compact, which generally attempts to implement the one-license concept, not only is limited to 31 states but more importantly, has no effective enforcement mechanism. Indeed some member states do not attempt to adhere to its provisions.

Your second question requested information on the safety performance of 28-foot by 102-inch single trailer units.

AAA contacted automobile clubs and officials in several states to ask about their experience with these vehicles. It seems that several factors make it difficult to assess their safety record.

First, states report that these trailers have only been in widespread use for a short period of time. More importantly, state accident report forms do not record length, width, weight, number of axles, or vehicle configuration, so the accident involvement of different vehicle combinations cannot be identified except by file-by-file search and cross match with registration data—a costly and time consuming exercise.

According to an assistant attorney general in Connecticut, states whose legislatures have increased permissible widths to 102 inches on state roads are not making efforts to track the performance of the 28-foot single trailers.

New York, a state with 96-inch width limits on local roads, reports no significant problems with the use of the 102-inch single trailers outside New York City. However, the state maintains that Section 106 of the Tandem Truck Safety Act intrudes upon traditional state regulation of safety on local roads. The state legislature is therefore resisting adoption of language conforming with that section. New York City is in the process of developing local ordinances in compliance with Section 106 but reserving its option to impose restrictions on the single trailers if it becomes necessary.

The Georgia Department of Transportation observes that trucking companies are putting their best-trained, most experienced drivers in charge of their 102-inch-wide trailers, encouraging their safe operation.

Thank you again for the opportunity to participate in your hearing. Further questions are always welcome.

Sincerely,

JOHN ARCHER,
Managing Director, Government Affairs.

Senator PACKWOOD. I apologize for delaying the hearing and not being able to go until this afternoon.

We will conclude with Mr. Robert Redding and Mr. Oran Ellis. Would you like to go first, Mr. Redding?

STATEMENTS OF ROBERT E. REDDING, DIRECTOR OF FEDERAL AFFAIRS, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.; AND ORAN ELLIS, NATIONAL SECRETARY-DESIGNATE, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS, ACCOMPANIED BY DENNIS LAVALLEE, DIRECTOR OF GOVERNMENT AFFAIRS; AND CHARLES LAVIN, EXECUTIVE VICE PRESIDENT

Mr. REDDING. Thank you very much, Mr. Chairman.

Senator PACKWOOD. I hope you did not get hit by a big truck.

Mr. REDDING. Sir, I hate to have the record show that I fell on my face.

But like George Washington, it is the truth, and it happened in a very heavy rainstorm four weekends ago at South Bethany, and I dislocated my shoulder. But I hope it does not adversely affect my testimony.

It is a pleasure for me to appear here on behalf of the Shippers National Freight Claim Council, an organization of over 700 large and small shippers and other transport interests.

As you well know, I am a substitute speaker here for Mr. Augello, the executive director and general counsel, who is attending a shipper claims board meeting in Fort Worth. So I will do my best to present the case for retaining the Carmack amendment and related ICC regulations applicable to motor common carriers.

A copy of Mr. Angello's statement has been submitted and I respectfully request that it be included in the record.

Senator PACKWOOD. Without objection.

Mr. REDDING. The position of the Council on Carmack and on ICC regulations is well known to this committee. It was presented four times in the last several years in oversight hearings on the two transport acts. It was also presented 4 months ago in regard to S. 1124, the bill to reduce the regulation of domestic surface forwarders.

You will recall that the committee unanimously recognized the importance of continuing the provisions of the Carmack amendment for the transportation of general commodities by surface forwarders, as indicated in the report of July 31. Today we respectfully urge that carrier liability become the third area to be retained for Government regulation, similar to insurance and safety, insofar as motor common carriers are concerned.

Now, why retain Carmack? Our view and experience is that cargo liability issues are not responsive to marketplace competition among common carriers, which is the basic precept, of course supporting deregulation of other aspects of common carriers.

Why is it not responsive? First, the inevitable problem of carrier liability and claim for recovery is a negative issue and therefore is scrupulously avoided by carrier salesmen in marketplace competition for shipper freight. Instead, they stress the areas of advantageous rates and good service vis-a-vis other carriers.

Two, the events of loss, damage, and delay become known to the shippers and receivers only after the transportation has been completed to the destination. Claims arise after the fact.

Three, it is important to realize that relatively few shippers are sophisticated in the law of carrier liability, and therefore they rely upon our historic statutes and the availability of ICC regulations to protect them and to provide just and reasonable loss and damage rules and claims procedures.

Four, one highly valuable protection afforded by Carmack is the joint and several liability on interline freight. Thus, the shipper need not assume the legal obligation in litigation to prove that the carrier had possession of the goods when they were stolen or lost or damaged or delayed. It is impossible for the shipper to have such information. Take away Carmack and this basic protection, which has stood the test of 80 years, will be destroyed.

Five, in prior oversight testimony the council has documented many instances where the removal of loss and damage protection has left carriers completely free to limit their cargo liability at will.

To repeal such protection, which ultimately affects the price of goods to consumers, for motor common carriage, would do irreparable harm to the shipping community, most of whom have been traditionally small shippers, all of whom use trucking services. Once Carmack protection is removed, the freedom of motor carriers to take unilateral action on loss and damage caused by them can only result in a climate that will promote confusion, increased litigation, and ultimately force the shipper and receiver to assume the burden of liability in all cases.

Why is this result now against the public interest? Because the bailment of goods or the transfer of goods to the carrier for transport removes the shipper from direct contact or knowledge of theft or damage and delay while in the custody of the carrier or carriers.

Carriers must be held responsible, Mr. Chairman, for their own acts of negligence or inaction. They cannot otherwise fulfill their common carrier obligation. And, Carmack is the incentive to minimize loss, damage, and delay.

In short, Mr. Chairman, the Carmack protection has existed for 80 years. It was enacted to protect the public interest. Nothing has changed in eight decades to eliminate the need for such protection. Chairman Taylor agreed at your oversight hearing 10 days ago.

Mr. Chairman, the balance of Mr. Augello's statement, because I will not take my total time, simply addresses three other needs:

One, to prohibit motor carriers from using the deductibles concept in released ratemaking, a concept legislated in 1980 solely for railroads.

Two, to prohibit motor carriers from limiting cargo liability through released rates without shipper consent, which is called the automatic release, a trap for the unwary, by a recent Federal district court just 2 months ago.

Three, to legislate the successful arbitration program applicable to household goods movement disputes, to apply to motor carrier-shipper disputes on cargo liability, a concept endorsed by the ICC just 4 years ago.

That concludes my summary statement, Mr. Chairman. I would be glad to answer any questions.

[The statement follows:]

STATEMENT OF WILLIAM J. AUGELLO, EXEC. DIR./GEN. COUNSEL, SHIPPERS NATIONAL FREIGHT CLAIM COUNCIL, INC.

On behalf of the membership of the SNFCC, consisting of over 750 national corporations interested in the improvement and preservation of carrier liability standards and the reduction of loss and damage claims which amount to over one billion dollars a year, I wish to thank the Committee for this opportunity to testify on the carrier liability problems which must be considered in the process of further deregulating the motor carrier industry.

Our Council has presented testimony in previous Oversight Hearings held by this Committee in an effort to apprise Congress of the serious liability problems produced by the Motor Carrier Act of 1980. (See Statements of William J. Augello on behalf of SNFCC dated September 18, 1984 and December 14, 1982 before this Committee on the Motor Carrier Act of 1980, and November 10, 1981 and July 9, 1981 before this Committee on the Staggers Rail Act of 1980 and Motor Carrier Act of 1980 respectively.)

RETENTION OF CARMACK

Our Council has assessed the liability consequences of the various deregulation actions and proposals of Congress and the regulatory agencies to date and has formulated policies for all four modes of transportation. The cornerstone of our position is the retention of the Carmack Amendment (49 U.S.C. §§ 11707 and 10730), and the I.C.C.'s regulations promulgated pursuant to this long existing statute.

Your Committee has recently recognized the importance of continuing the provisions of the Carmack Amendment for the transportation of general commodities by freight forwarders. See Sec. 12, p. 17 of Sen. Rep. 99-120 wherein the Committee stated "Subsection (c) amends section 11707(a) of title 49, United States Code, to continue to subject general commodities freight forwarders to the liability provisions of the Carmack Amendment. The Committee understands the significance of these liability provisions to the shipping community as well as to the freight forwarder industry itself. The Committee believes it is in the best interests of shippers and forwarders to have cargo liability limits clearly defined."

Chairman Packwood also stated, at p. 45 of the Report, that: "S. 1124 retains Federal regulation in one important area: cargo liability and claims settlement procedures. During the Subcommittee on Surface Transportation hearing on S. 1124, representatives of various shipper groups stressed the need for continued regulation in this area to ensure that freight forwarders are responsible for any loss or damage they create, as are other carriers by statute. Therefore, the provisions of the Carmack Amendment (section 11707(a) of the Interstate Commerce Act) remain applicable to general commodities freight forwarders."

The same justification exists for retention of the Carmack Amendment for motor carriers as was submitted to the Committee for freight forwarders, if not more so. Senate Hearing 99-81, May 17, 1985, p. 42-49. Thus, the Council strongly urges that carrier liability be added to insurance and safety as the three areas of federal regulation which are in the public interest and which must be excluded from any further deregulation of the transportation industries.

CARRIER LIABILITY DOES NOT REACT TO INCREASED COMPETITION

Contrary to the Administration's contentions that liability issues will respond to competition and therefore should be left to the marketplace, our experience demonstrates that removal of federal constraints on carrier liability for loss, damage and delay of the public's goods is not in the public interest. The marketplace has not produced benefits for shippers in liability matters. The reasons are 1) Liability and claims are negative issues, and therefore are not generally used by carrier salesmen in competing for freight. Rates and service are the competitive issues; 2) Claims occur after-the-fact. They are not anticipated by most traffic personnel during the carrier selection process. As a matter of fact, relatively few shippers are sophisticated in the law of carrier liability and therefore rely upon our historic federal statutes and I.C.C. regulations for just and reasonable loss and damage rules and claim policies.

To repeal these laws and regulations at this time, leaving carriers completely free to limit their liability at will, as the airlines and railroads have, will undoubtedly result in irreparable harm to users of common carriers. Since the great majority of common carrier services have traditionally been small shipment shippers, Congress should retain, in existing laws governing common carriers, those liability constraints designed to protect the public against carrier management attempts to evade liability.

DEDUCTIBLES

Today, we wish to place special emphasis on a new problem created by the I.C.C.'s unwarranted extension of the special privilege granted by Congress to the railroad industry in the Staggers Act of 1980 to include "deductibles" in released rate agreements. A "deductible" is an amount, usually $100 to $200 which the carrier will deduct from any claim payment due to the claimant in return for a lower rate.

In brief, the I.C.C. decided that motor carriers, household goods carriers and freight forwarders may also incorporate "deductibles" in their rates, despite Congress' clear intent to limit their use to rail rate agreements.

A detailed explanation of the legislative history of deductibles and the litigation which resulted thereafter is annexed as Appendix A hereto.

The end result of these developments is that all surface modes of carriage may presently use deductibles, a result clearly not intended by Congress.

Of greater significance, however, is the dangerous precedent which the I.C.C. has created, and which must be addressed by Congress. The Commission, in effect, has said that, notwithstanding the fact that Congress grants a special privilege to one mode, in a sub-section of the U.S. Code which governs only that mode, the Commission may extend that privilege to other modes.

A recent decision of the U.S. Court of Appeals for the Distict of Columbia, in effect, held the Commission guilty of a similar violation of Congressional intent. In *Cross-Sound Ferry Services, Inc. v. I.C.C.*, No. 83-2155, July 6, 1984, the Court of Appeals held that the I.C.C. improperly applied the standard of "representational points" in a water carrier application, a standard which is prescribed in Sec. 10922(e)(1)(C) for motor carriers, but which is not prescribed for water carriers in Sec. 10922(f). (See Footnote 2 in decision) This unlawful extension of the law to other modes is analogous to the I.C.C.'s decision to permit all surface carriers to use deductibles although only sub-section (c) of Section 10730 permits their use.

Similar gratuitous extensions of Congressional intent for one mode to other modes by the I.C.C. could undoubtedly be gleaned from the Commission's recent decisions. The point is that only Congress may change the law, and when the Commission is guilty of violating Congressional intent, Congress must take remedial action forthwith, lest the Commission's policies continue unbrided.

With respect to deductibles, the public interest clearly calls for an amendment to Sec. 10730 of 49 U.S.C. to preclude deductibles.

We will reserve our right to address the propriety of permitting railroads to incorporate deductibles in their rates structures in Oversight Hearings on the Staggers Rail Act when they are next scheduled. However, to demonstrate the magnitude of the unrecoverable transit losses experienced by the shipping public as a direct result of legislative "tinkering" with the law of bailments, we direct the Committee's attention to the fact that the railroad industry has reduced its claim payments by $160 million a year since 1980.[1] One of the principle sources of this evasion of liability is the deductible provisions introduced in Section 10730(c) of 49 U.S.C. in the Staggers Act. This conclusions is based on the fact that the average claim for loss or damage has traditionally been between $100 and $200 per shipment. The introduction of deductibles and minimums of from $100 to $200 per shipment has virtually eliminated railroad liability for the great majority of rail traffic.

The shipping public has suffered from these unconscionable legislative changes in the law of bailments with respect to railroad liability for loss, damage and delay in transit. Fortunately the application of deductibles has not yet become prevalent among motor carriers. The obvious reason is that motor carrier management realizes that most motor carrier traffic is physically handled by their employees at some stage of the distribution cycle, unlike rail shipments. Therefore, a deductible in the motor carrier environment would have the same impact as a "license to steal".

Congress must rectify the I.C.C.'s gratuitous extension of deductibles to the motor carrier and freight forwarder industries before this distortion of the law causes ir-

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[1] In 1980, the railroads paid $324,513,612 in claims. In 1984, they paid only $160,990,950, a 50% reduction.

reparable harm to that segment of the shipping public utilizing these modes of carriage.

AUTOMATIC RELEASES

Another adverse result of the Motor Carrier Act of 1980 with respect to carrier liability has been the repeal of I.C.C. jurisdiction over the prior approval of released rates. As a result, some motor carriers are introducing "automatic" released rates into their tariffs to the detriment of the shipping public and consumers.

"Automatic" released rates are those which limit the carrier's liability without an affirmative act or election by the shipper. They arise by reason of a tariff rule which is often unknown to the shipper.

"Automatic" releases differ from the traditional form of released rates formerly required by the I.C.C. Prior to 1980, the I.C.C.'s approval of released rates was conditioned on the shipper executing a specific released value statement and inserting the dollar limit of that release in the bill of lading; i.e.,

"The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding —— per ——."

Thus, the I.C.C. required evidence of a conscious choice by the shipper. It repeatedly held to be unlawful, any attempt by carriers to introduce released rates which violated this principle and were designed to catch the unsophisticated shipper by surprise. Ex Parte No. MC-98 (Sub 2) Released Rate-Small Shipments Tariff, 361 I.C.C. 404, 415–417, and Transconex, Inc.—General Commodities, Rel. Rate Decision No. FF-305, Oct. 21, 1982.

The Federal District Court for the Northern District of Illinois has recently set aside a railroad's TOFC/COFC tariff containing a similar device in *Co-Operative Shippers, Inc.* v. *Atchison, Topeka and Santa Fe Railway Co;* (E.D. Ill. 1985) Dkt. No. 84C 2359, 7/3/85. This Court recognized the unlawfulness of the automatic release, aptly referring to it as a "trap for the unwary".

"For example, in Ex Parte No. MC-98 (Sub-No. 2), Released Rates in Conjunction with a Small Shipments Tariff, 361 I.C.C. 405 (1979), the I.C.C. ruled:

'We agree with the majority that releasing rates ought not be automatic. The shipper who deliberately signs for released rates is less likely to release the value by mistake than is the shipper whose shipments are subject to released value unless he or she indicates full liability is desired. An accidental release of value could be catastrophic, whereas higher full value rates may be more easily absorbed.

'Shippers must be able to choose the transportation service which most closely conforms to their needs. A released rates provision can add flexibility to rates and services. However, if the release is automatic, the flexibility of the system could be illusory . . .' 361 I.C.C. at 416, 417.

"The courts also have held that a carrier cannot limit its liability automatically or by implication, Instead, '[t]here must be an absolute, deliberate and well-informed choice by the shipper,' *Anton* v. *Greyhound Van Lines, Inc.*, 591 F.2d 103, 108 (1st Cir. 1978). As the Second Circuit stated,

'To permit a carrier, without any action whatever by the shipper in respect to valuation in writing, to limit its liability on the basis of declared or released value on which the rate was charged would be to ignore entirely the statutory requirement that the shipper must make the declaration or agreement in writing . . .' *Canten* v. *Salt City Movers & Storage Co.*, 149 F.2d 428, 432 (2d Cir. 1945) . . . .

"The problem with this contractual scheme is that it reverses the assumption of liability required by §§ 10730 and 11707. Santa Fe is offering full liability rates, but only as an alternative to otherwise applicable released rates. The automatic nature of Sanfa Fe's limitation of liability is precisely the 'trap for the unwary' that the I.C.C. has refused to allow by requiring carriers to obtain a deliberate release from the shippers. Accordingly, Items 52 and 57 do not comply with §§ 10730 and 11707, and they unenforceable. 49 U.S.C. § 11707(c)(1); *See also Fruitco Corp.* v. *Consolidated Rail Corp.*, 118 Misc. 1090, 462 N.Y.S.2d 754, 757 (N.Y. Cir. St. 1983)."

Accordingly, Congress is urged to rectify this undesirable result of the Motor Carrier Act of 1980 by codifying the public policy of the nation concerning release rates, as set forth in the landmark decision of *Adams Express* v. *Croninger*, 226 U.S. 491 (1913).

This objective could readily by achieved by amending 49 U.S.C. § 10730 to read: '"(d) A motor carrier or a freight forwarder may, be a fair, open, just and reasonable agreement limit the amount recoverable by a shipper in case of loss or damage, to an agreed value made for the purpose of obtaining the lower of two or more rates or charges proportioned to the amount of the risks in transit. Such limitations may not provide for specific amounts to be deducted from any claim or for 'automatic' releases."

This remedy would avoid restoration of I.C.C. involvement in judging the lawfulness of released rates, and would give the shipping public statutory relief in the courts against currently effective automatic releases. The codification of these common law provisions would act as a deterrent against carriers attempting to introduce such provisions in the future.

ARBITRATION

In 1980, Congress enacted the first arbitration legislation affecting the transportation industry—The Dispute Settlement Program for Household Goods Carriers in the Household Goods Transportation Act of 1980. 49 U.S.C. § 11711.

The shipping public urgently needs a similar inducement for the fair, inexpensive settlement of loss and damage freight claims against the motor carrier industry.

The Household Goods Dispute Settlement law provides in essence, that if a household goods carrier fails to offer an I.C.C.-approved arbitration program to a household goods shipper, the claimant may elect to institute suit against the carrier, and if it prevails, recover reasonable attorney fees. The attorney fees provision is the cornerstone of the legislation because carriers traditionally weigh the claimant's cost of litigation in its determination of whether to pay the claim in full, in part, or to deny liability for a loss for which they are liable.

This law also provides for the carrier recovering its attorney fees if it prevails and the court finds the suit was instituted in bad faith.

The Council urges adoption of a similar arbitration program for all property moving in interstate or foreign commerce not presently covered by 49 U.S.C. § 11711. The specific terms of this suggested legislation are annexed as Appendix B.

The Household Goods arbitration program is working for C.O.D. Household Goods shippers. It will work satisfactorily for all other household goods and commercial shippers of property. It is urgently needed as an inducement to fair settlements of freight claim disputes and to reduce the caseload on our state and federal court systems.

APPENDIX A.—A CHRONOLOGICAL HISTORY OF THE INTRODUCTION OF "DEDUCTIBLES" INTO BAILMENT CONTRACTS

When Congress repealed the I.C.C.'s jurisdiction over the prior approval of released rate filings of motor carriers, it unwittingly created a situation which has resulted in the filing of insurance-type "deductible" clauses in contracts of carriage. However, this result could not have been foreseen by Congress: it was permitted to take place by the I.C.C.'s unwarranted interpretation of The Motor Carrier Act of 1980 and the improper imposition of its marketplace concepts which far exceed the Congressional intent.

The introduction of deductibles into motor carrier and freight forwarder released rates which shall have disastrous consequences for the nation's commerce for decades to come if permitted to continue, was made possible by the following events;

(1) In 1920, Congress enacted Section 20(11) of The Interstate Commerce Act (commonly known as the Carmack Amendment) prohibiting commmon carriers from limiting their liability against their negligent acts unless the I.C.C. approved a released rate offering a lower rate for limited liability.

Congress clearly intended to permit the parties to negotiate a maximum value and to limit the carrier's liability to that amount. Congress clearly did not contemplate permitting zero liability, such as could result if the amount of a loss were to be lower than the deductibile.

(2) On October 17, 1978, this section was recodified by P. Law 95-473, at 92 Stat. 1389 & 1453 without changing its substance.

(3) On July 1, 1980 Congress eliminated the I.C.C.'s jurisdiction to approve motor common carrier released rates, but preserved that power with respect to household good carriers and freight forwarders. Motor Carrier Act of 1980 P. Law 96-296, 94 Stat. 802 (See Appendix B. Section 10730(a) and (b))

(4) On October 14, 1980, Congress further revised Sec. 10730 by adding a new subsection for railroads, and introducing the insurance industry's concept of "deductibles" into railroads released rates. Staggers Rail Act of 1980, P. Law 96-448, 94 Stat. 1911

(5) On March 3, 1980, a household goods carrier filed a released rate application which included a deductible provision. Docket No. FF-303, Interstate International, Inc., Used Household Goods. The I.C.C. allowed the rates to become effective over protests of our Council and other shipper groups who argued that deductibles were

authorized by Congress only in part (c) of Sec. 10730. That decision was appealed to the 2nd Circuit Court of Appeals in *Shippers National Freight Council, et al.* v. *I.C.C. and U.S.* No 80-4243.

(6) On March 23, 1982, the I.C.C. issued a declaratory order to the effect that motor carriers (other than household goods carriers) and freight forwarders may also include deductibles in their released rate agreements. Docket No. 38752, Petition For Declaratory Order on Deductibles in Household Good Released Rates. This issue was added to the appeal of the I.C.C.'s decision on household goods deductibles although no specific motor carrier or freight forwarder released rate was filed at the time.

(7) On June 13, 1983, the I.C.C.'s decision was upheld by a 2-1 decision of the 2nd Circuit Court of Appeals, with a separate dissenting opinion by Judge Pratt. 712 F 2nd 740. On June 18, 1984, the Supreme Court denied our petition for certoriaria without opinion. 104 S. Ct. 3534 (1984).

It is our council's position, as well as other shipper interests, that Congress did not intend motor carriers, freight forwarders or household goods carriers to be permitted to include deductibles in their released rate agreements with shippers. This position is founded on the following:

(a) The specific statutory terms used in 49 U.S.C. 10730(c) to authorize deductibles govern railroads only, and are not used in sub-sections (a) or (b) in connection with household goods freight forwarder or motor carriers, although all three sub-sections were modified or enacted between July and November 1980. This is a clear expression of Congressional intent not to permit carriers other than railroads to use deductible.

(b) The establishment of a maximum value was contemplated by Congress in enacting the Carmack Amendment, not a deductible, which is a minimum amount for which a carrier will acknowledge liability. This conclusion is evidenced by the phrase "not exceeding the value so declared or released" in the second proviso of Sec. 20(11) (See attachment 1)[2] and the phrase "limited as to value" in Section 10730. (See attachment 3).

(c) No justification may be found in the legislative history of any of the 1980 deregulation acts to support a finding that Congress intended any mode of transportation other than railroads to utilize deductibles in released rate agreements. The railroads were only granted this privilege in recognition of the dire financial condition of the industry. H. Rep. 96-1430, p. 79.

(d) No carrier of any type, for the past 60 years, has interpreted the Carmack Amendment or the common law as permitting deductibles in a bailment situation.

(e) Deductibles are inappropriated when the goods involved are transferred to the carrier for its safekeeping, since the owner relinquishes control over his goods to the carrier. On the other hand, deductibles are common in insurance contracts where the owner of the goods retains possession of his goods and weighs the risk of loss or damage caused by his negligence against a lower or higher premium.

(f) Deductibles in a common carrier environment equates to a "license to steal". When the amount of the deductible in the bill of lading becomes known to employees physically handling a shipment, (such as usually occurs in a motor carrier freight forwarder movement, but not in a rail movement) theft and pilferage up to that amount will unquestionably proliferate. The reason is that no claim can be filed for losses under the amount of the deductible, no investigation will be conducted by the carrier, and the risk of detection and prosecution will be removed. Honest employees will soon join the ranks of professional thieves.

To date, very few deductibles are known to be in use by motor carriers or freight forwarders, although they are common in exempt rail circulars for carload traffic which is loaded and sealed by the shipper.

APPENDIX—CARGO DISPUTE SETTLEMENT LEGISLATION

Chapter 1 of title 9, United States Code, is amended by inserting after section 14 the following new section 15: Section 15. *Dispute settlement program for common carriers.*—(a)(1) One or more common carriers providing transportation of property (other than collect-on-delivery transportation of household goods as defined in 49 U.S.C. Section 10102 (10) (A)) subject to the jurisdiction of the Interstate Commerce Commission under subchapters I, II and IV of chapter 105, hereinafter referred to as the Commission. Title 49 who want to establish a program to settle disputes between such carriers and shippers concerning the transportation of such property may submit an application for establishing such program to the Commission. Such application shall be in such form and contain such information as the Commission may, by regulation, require. The Commission shall review and approve, in accordance with the provisions of this section, each application submitted under this subsection.

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[2] Attachments 1-3 were not reproducible and are in the Committee files.

(2) The Commission shall approve, at least within 45 days of its filing, any application to establish a program for setting disputes concerning the transportation of property which meets the requirements of subsection (b) of this section.

(3) The Commission may investigate at any time the functioning of any program approved under this section and, after notice and an opportunity for a hearing, may suspend or revoke its approval for failure to meet the requirements of this section and such regulations as the Commission may issue to carry out the provisions of this section.

(4) This dispute settlement program shall not apply to shipments of property the value of which exceeds $5,000 per shipment.

(b) No program for settling disputes concerning the transportation of property may be approved under this section unless the program is a fair and expeditions method for settling such disputes and complies with each of the following requirements and such regulations as the Commission may issue:

(1) The program is designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier's principal or other place of business.

(2) The program provides for adequate notice of the availability of such program, including a concise easy-to-read, accurate summary of the program and disclosure of the legal effects of election to utilize the program. Such notice must be given to persons for whom such property is to be transported by the carrier before such property is tendered to the carrier for transportation.

(3) Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action under the program to resolve a dispute.

(4) Each person, authorized pursuant to the program to arbitrate or otherwsie settle disputes, must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Commission may issue, to resolve such disputes fairly and expeditiously. The program must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevent information to the extent necessary to carry out a fair and expeditious decision-making process.

(5) The program must not require the shipper to agree to utilize the dispute settlement program prior to the time that a dispute arises.

(6) The program may provide for an oral presentation of a dispute concerning transportation of property by a party to the dispute (or a party's representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.

(7) Any person settling a dispute concerning transportation of property under the program must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered, except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the dispute settler may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, and compensation for damages.

(c) Materials and information obtained in the course of decisionmaking process to settle a dispute under a dispute settlement program approved under this section may not be used to bring an action under section 11910 of Title 49.

(d) In any court action to resolve a dispute between a shipper of property and a common carrier providing transportation subject to the jurisdiction of the Commission under subchapters I, II and IV of chapter 105 of Title 49 concerning the transportation of property (other than household goods) by such carrier, the shipper shall be awarded reasonable attorney's fees if—

(1) the shipper submits a claim to the carrier within 9 months after the date the shipment is delivered or, in the event of nondelivery, within 9 months plus a reasonable time for delivery, whichever is later;

(2) the shipper prevails in such court action; and

(3) (A) no dispute settlement program approved under this section was available for use by the shipper to resolve the dispute; or

(B) the court proceeding is to enforce a decision rendered under a dispute settlement program approved under this section and is instituted after the period for performance under such decision has elapsed.

(e) In any court action to resolve a dispute between a shipper of property and a common carrier providing transportation subject to the jurisdiction of the Commission under subchapter I, II and IV of chapter 105 of Title 49 concerning the transportation of property (other than household goods) by such carrier, such carrier may be awarded reasonable attorney's fees by the court only if the shipper brought such action in bad faith—

(1) after resolution of such dispute under a dispute settlement program approved under this section; or

(2) after institution of a proceeding by the shipper to resolve such dispute under a dispute settlement program approved under this section but before (A) the period provided under subsection (b) (8) for resolution of such dispute (including, if applicable an extension of such period under such subsection) ends, and (B) a decision resolving such dispute is rendered under such program.

Senator PACKWOOD. Thank you.

Mr. Ellis.

Mr. ELLIS. Members of the committee.

My name is Oran Ellis and I am incoming national secretary to the National Association of Plumbing, Heating, and Cooling Contractors [NAPHCC]. Accompanying me are NAPHCC director of Government Affairs Dennis Lavallee and executive vice president Charles Lavin.

NAPHCC has over 6,000 members throughout the country and is organized through about 300 State and local chapters. All together, this industry employs 400,000 people and has $21 billion of annual income and revenue. Our association is the largest in plumbing, heating, cooling industry and the oldest in construction industry.

We support efforts by the Federal Government to deregulate economic activity and let the free enterprise system operate with less constraints. Thus, we are generally supportive of deregulation of the trucking industry, while recognizing that safety and liability issues may require continued Federal attention.

Therefore, we also support strengthening the rights of receivers of shipped goods to enable us to obtain quick resolution of claims for goods damaged in transit. Certainly the Carmack amendments are an important cornerstone in that process. However, they cannot be as effective when delays undermine their foundation.

Additional provisions are needed to increase the legal and economic clout of receivers to obtain speedy resolution of claims. For example, we should not be required to pay for shipping costs until claims have been resolved. When freight shipments are damaged in transit, the business receiving the goods is injured as well. Businesses expect safe transit and receipt of goods.

Our loss is multifold. Since many shipments in the plumbing and mechanical industry are shipped f.o.b. factory, once they leave his dock they are our property and we must pay the manufacturer. Since current tariff regulations require that we pay the carrier in 15 days, we must pay him promptly as well.

When we find that we have received products or equipment which we cannot use until they are replaced or repaired, we must act quickly to correct the damage to use the goods at the job site. We have 15 days to pay their bill, but they have unlimited time to pay our claims.

Fortunately, the Carmack amendments provide a mechanism to file a claim with a carrier for our loss. However, when those claims drag on unresolved for months, further injury is added to injury. The manufacturer has been paid and he has little incentive to help. The carrier has been paid and he has little incentive to assist beyond the requirements under the Carmack amendments.

Since our contracting business has no relationship with the carrier's insurance company, the insurance company has little incentive to resolve the claim quickly. Meanwhile, the Carmack requirements can be undermined by the delays in resolving the claim and the amounts of paperwork and time it requires to get paid.

Larger companies can use their economic clout to withhold business. As smaller companies, we cannot obtain the same effect. Furthermore, antitrust laws prevent us from banding together to use combined clout.

Let me briefly recite the events of a claim we currently have outstanding in my own company. Last year we ordered 43 air coolers or air-conditioning units for over $26,000 from a manufacturer in New York. When they arrived at the end of October, we found that five were damaged. The damage was noted on the waybill at the time of delivery.

My company has paid the manufacturer for the equipment, the trucking company for the delivery, and another $890 for materials and labor to rebuild the equipment and reship it to the job site. We filed a claim with Benton Bro., the delivering carrier, in November. That claim was acknowledged as received by Benton Bro. in December.

In February 1985, we received copies of correspondence from Benton Bros. to Yellow Freight. Yellow Freight had picked up the equipment from the manufacturer. In the correspondence, Benton Bros. notes: "This shipment was loaded on the delivering trailer by Yellow Freight and was not handled by Benton Bros. until it was delivered at the consignee."

Benton Bros. asked Yellow Freight to handle the claim. What has followed has been a steady exchange of correspondence and phone calls between the two trucking firms and with my staff. Both trucking companies tacitly acknowledge a legitimate claim, but both trucking firms point the finger at the other to resolve it.

Meanwhile, more than 10 months later and with both the manufacturer and the carrier paid, we still have not been paid for the claim. Moreover, there is no profit included. The claim is to recover out of pocket expenses.

I am, by no means, alone in my problems with freight claims. Over the summer, NAPHCC has been conducting a survey of our members to assess the impact of slow payment of freight claims. The results are attached as an appendix to my written statement.

However, let me highlight a few observations and conclusions that can be drawn from this survey. A significant share of shipments arrive damaged. Half the contractors who responded said 10 percent of the shipments they received had visible damage.

A quarter of the claims take 6 months or more. While a quarter of the claims get resolved in 2 months or less, the median claim takes 3 months, and that is too long. This is money that is out of pocket and out of the company's cash flow.

Contractors work on tight time schedules and tight cash flows with low profit margins. Since construction usually requires expenditures for labor and materials before progress payments are received, sometimes we have to borrow money to keep them going.

Third, correcting the damage costs more than the claims collect.

In conclusion, the National Association of Plumbing, Heating, Cooling Contractors supports retaining the Carmack amendments, providing for liability protection in any legislation to deregulate trucking. However, we also urge you to go beyond Carmack to increase the incentive for quick resolution of claims. Either mandate more speedy payment or permit receivers to effectively use their economic and legal clout.

We have 15 days to pay the carrier, but they have unlimited time to pay the claim. We should not have to pay the carrier until the claims have been paid, or require the shippers to withhold payment until it is received in good order.

Thank you very much. I would be glad to answer any questions.

[The statement follows:]

STATEMENT OF ORAN ELLIS, ASTRON MECHANICAL, INC., TAMPA, FL, ON BEHALF OF THE NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS

Mr. Chairman and members of the Committee, my name is Oran Ellis and I am the incoming National Secretary of the National Association of Plumbing-Heating-Cooling Contractors (NAPHCC). Accompanying me are NAPHCC Executive Vice-President Charles Lavin, and Director of Government Affairs Dennis Lavallee.

NAPHCC has over 6,000 members throughout the country and is organized through about 300 state and local chapters. Altogether, this industry employs 400,000 people and has 21 billion dollars of annual revenue. Our association is the largest in the plumbing-heating-cooling industry and the oldest in the construction industry.

I am also an officer of Astron Mechanical Incorporated. We do approximately $20 million of mechanical contracting work in Florida.

This statement is also submitted on behalf of the Associated Specialty Contractors (ASC) a coalition of 8 national trade associations of construction industry contractors and the National Construction Industry Council (NCIC), a coalition of 26 national trade associations of industry contractors, design professionals and surety groups.

We support efforts by the federal government to deregulate economic activity and let the free enterprise system operate with less constraints. Thus, we are generally supportive of deregulation of the trucking industry, while recognizing that safety and liability issues may require continued federal attention.

Therefore, we also support strengthening the rights of receivers of shipped goods to enable us to obtain quick resolution of claims for goods damaged in transit. Certainly, the Carmack amendments are an important cornerstone in that process. However, they cannot be as effective when delays undermine their foundation.

The so-called "Carmack" amendments were passed in 1906. They establish carrier liability for claims and they provide mechanisms for filing claims and having them resolved.

Additional provisions are needed to increase the legal and economic clout of receivers to obtain speedy resolution of claims. For example, we should not be required to pay for shipping costs until claims have been resolved.

When freight shipments are damaged in transit, the business receiving the goods is injured as well. Businesses expect safe transit and receipt of goods. Our loss is multi-fold. Since many shipments in the plumbing and mechanical industry are shipped f.o.b. factory, once they leave his dock they are our property and we must pay the manufacturer. Since current tariff regulations require that we pay the carrier in 15 days, we must pay him promptly as well. When we find that we have received products or equipment which we cannot use until they are replaced or repaired we must act quickly to correct the damage to use the goods at the job site. We have 15 days to pay their bill, but they have unlimited time to pay our claims.

Fortunately, the Carmack amendments provide a mechanism to file a claim with the carrier for our loss. However, when those claims drag on unresolved for months, further injury is added to injury.

The manufacturer has been paid and he has little incentive to help. The carrier has been paid and he has little incentive to assist beyond requirements under the Carmack amendments. Since our contracting business has no relationship with the carrier's insurance company, the insurance company has little incentive to resolve a claim quickly. Meanwhile, the Carmack requirements can be undermined by the delays in resolving the claim and the mounds of paperwork and time it requires to get paid.

Larger companies can use their economic clout and withhold business. As smaller companies, we cannot obtain the same effect. Furthermore, the antitrust laws prevent us from banding together to use combined clout.

EXAMPLE: ASTRON MECHANICAL HAS WAITED MORE THAN 10 MONTHS

Let me briefly recite the events of a claim we currently have outstanding.

Last year, we ordered 43 air coolers for over $26,000 from a manufacturer in New York. When they were delivered at the end of October, we found that 5 were damaged. This damage was noted on the weigh bill at the time of delivery.

My company has paid the manufacturer for the equipment, the trucking company for the delivery and another $890 for materials for labor to rebuild the equipment and reship it to the job site.

We filed a claim for the damage with Benton Brothers, the delivering carrier, in November. That claim was acknowledged as received by Benton Brothers in December.

In February, 1985, we received copies of correspondence from Benton Brothers to Yellow Freight. (Yellow Freight had picked up the equipment from the manufacturer.) In the correspondence, Benton Brothers notes "this shipment was loaded on the delivering trailer (of Benton Brothers) by Yellow Freight Company and was not handled by Benton Brothers until it was delivered at the consignee." Benton Brothers asked Yellow Freight to handle the claim.

What has followed has been a steady exchange of correspondence and phone calls between the two trucking firms and with my staff. Both trucking campanies tacitly acknowledge a legitimate claim, but both trucking firms point the finger at the other to resolve it. Meanwhile, more than 10 months later, and with both the manufacturer and the carrier paid, we still have not been paid for the claim. Moreover, there's no profit included. The claim is to recover out of pocket expenses!

SURVEY SHOWS MANY ARE AFFECTED

I am, by no means, alone in my problems with freight claims. Over the summer, NAPHCC has been conducting a survey of our members to assess the impact of slow payment of freight claims. The results are attached as an appendix to my written statement.

However, let me highlight a few observations and conclusions that can be drawn from this survey of plumbing-heating-cooling contractors.

1. *A significant share of shipments arrive damaged.*—Half the contractors who responded said 10 percent of the shipments they received had visible damage. Even more may have concealed damaged. No wonder that two-thirds of the contractors said better packaging is needed.

However, there also needs to be more incentive for carriers to be more careful. What incentive is there when shipments are damaged and carriers can avoid paying claims through delay or arbitrary denial of responsibility.

If this level of damage and this amount of delay extends to other receivers, it certainly must hurt not only the company's economic growth, but national economic growth as well.

2. *A quarter of the claims take 6 months or more.*—While one quarter of claims get resolved in 2 months or less, the median claim takes 3 months. Even that is too long. This is money that is out-of-pocket and out of a company's cash flow.

Contractors work on tight time schedules and tight cash flows with low profit margins. Since cconstruction usually requires expenditures for labor and materials before progress payments are received, we borrow money to get jobs going and keep them going. Tie-ups of our money in delayed freight claims add unnecessary costs to construction.

3. *Correcting the damage costs more than the claims collect.*—Although contractors and other businesses are entitled to file claims for the cost of correcting damage, there are other costs which they do not collect. The lost use of money and the ad-

ministrative cost of constantly pursuing late payments make it more expensive to pursue a claim. Thus, a contractor may discover he has expended more funds pursuing the claim than the claim will ever pay.

Furthermore, claims are not large. The median claim for the contractors who responded was $600. Although they are entitled to civil litigation appeals, such claims hardly warrant the cost and expense. However, in the expectation of having a claim resolved quickly, a contractor can easily expend that much in personnel costs and other administrative costs, if the claim must be pursued.

CONCLUSION

The National Association of Plumbing-Heating-Cooling Contractors supports retaining the Carmack amendments providing for liability protection in any legislation to deregulate trucking. However, we also urge you to go beyond Carmack to increase the incentive for quick resolution of claims. Either mandate more speedy payment, or permit receivers to effectively use their economic and legal clout.

We have 15 days to pay the carrier, but he has unlimited time to pay the claim. We shouldn't have to pay the carrier until claims have been paid.

Alternatively, the Interstate Commerce Commission or some other body should be provided authority to quickly and inexpensively arbitrate claims.

During the Summer of 1985, NAPHCC sent out a survey to its 6,000 members on shipping freight damage. With 437 surveys returned, the response rate was over 7 percent.

APPENDIX 1.—SURVEY OF NAPHCC MEMBERS ON FREIGHT DAMAGE

	Yes		No
1. Do you feel that better packaging is needed, especially on the delicate, more expensive items? (percent)	66		34
	25% quartile	median	75% quartile
2. How long does it take for you to receive payment once you have notified the freight company of shipping damage?	2 months	3 months	6 months
3. What percentage of the shipments which you have received have damage that can be seen from the outside of the package prior to opening?	2	10	25
4. Manufacturers assume no responsibility for damage after their product is loaded on a truck, train or plane to be shipped to the contractor (F.O.B. Factory). What percent above product cost would you pay for the manufacturer to be responsible for his product until it reaches your designated delivery point?	0	1	3
5. What percentage of items shipped to you are faulty in some way? Please separate factory damage and freight damage			
Percent of items which are faulty in some way	4	8	15
Percent damage	2	5	19
Percent freight damage	2	5	10
6. How much do you spend annually correcting damage incurred during shipment?	$300	$1,000	$2,500
7. What percent of your gross sales is spent correcting shipping damage. Less than	1	1	1
8. What would you estimate is your average dollar amount of claims for shipping damage in a year?	$200	$600	$2,000

National Association of Plumbing-Heating-Cooling Contractors,
Falls Church, VA, September 24, 1985.

Hon. Bob Packwood,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: During your Subcommittee hearings on the Deregulation of the Trucking Industry on September 20, you asked us about the acceptability of insurance deductibles for carriers who cause freight damage to our goods prior to delivery to us.

As we indicated in the response to the question, we do not believe that carriers should be relieved of their responsibility to contractors and other receivers of goods.

The survey which we submitted for the record as part of my testimony shows that the median contractor has about $600 in claims in a year. The median contractor also spends approximately $1,000 attempting to collect claims.

To permit carriers to escape from liability for damage which they have caused would be a severe injustice to our contractors and costly to the economy. With the deductibles in place, contractors will find that they are receiving far less than what they are entitled to while spending more than the cost of the losses to attempt to get claims paid. Contractors will be less inclined to file claims and thus allow carriers to slip into growing irresponsibility for damage. Contractors already face added injury from freight damage through delays in the job, attempting to get complaints resolved and loss of administration and overhead.

Carrier liability should make carriers more responsible for shipments damaged while under their care. From the same survey which was submitted, ⅔ of the contractors believe that better packaging is needed, particularly for delicate or more expensive items. With full carrier liability for damage, carriers will pressure manufacturers, suppliers and other shippers for improved packaging.

While we do believe that carriers should be fully liable for damaged shipments, that liability does not necessarily need to fall upon the insurance system. We would have no objection to insurance deductibles, provided that carriers are required to self-insure for the deductible amount. Carriers should be required to make receivers whole with the combination of their self insurance and their liability insurance. Furthermore, carriers should be required to expedite their claims. Receivers should be permitted to withhold freight payments until the claims have been resolved.

We appreciate this opportunity to provide additional comments for the hearing record.

Sincerely,

ORAL ELLIS,
Astron Mechanical Inc. for the NAPHCC.

Senator PACKWOOD. Mr. Ellis, as we are going down the road toward deregulation—and I think we are going to—one thing the American Trucking Associations and many shippers and others want is the creation of a Motor Carrier Administration in the Department of Transportation. My first question is, would you support that? And if so, and assuming we terminate all other ICC duties relating to regulation, would that be a logical place to transfer cargo liability responsibility?

Mr. ELLIS. I think there is a third party involved, which is the insurance carrier, that has to do with part of paying the claim. For instance, the first thing you do when a claim comes in, you sign and note it on the waybill. It has gone back to the truck company that delivered it, which turns it over to an insurance company.

Whether a third party or another entity within the ICC is a good setup for this process, I really cannot answer that question. But we would be open to discuss it and to try to find out if there is maybe a better means.

Senator PACKWOOD. I do not quite understand your answer. We are basically talking about sunsetting the functions of the Interstate Commerce Commission, and what remaining functions there are in terms of safety, insurance, cargo liability, whatever else we choose, has to go someplace unless we are not going to keep them.

What we are talking about is creating a Motor Carrier Administration within the Department of Transportation. And I am curious if your association would support that.

Mr. ELLIS. We do need some place for them to be addressed and that is as good as any. We are not opposed to that.

Senator PACKWOOD. Thank you.

Mr. Redding, tell me the problem again that deductibles cause. We are also used to them in insurance and almost everything else. I am just curious why they were a problem on cargo liability.

Mr. **Redding**. The concept arose in legislation pertaining to rail deregulation in 1980. It came along in the final stages of that legislation, introduced in one of the many varying prints of bill at the last point in the history. But it went to no hearing.

There was no consideration given to the issue, either pro or con, in either House or Senate hearings, and at that time it was too late to obtain any hearing on the subject, and as a consequence it was legislated, as you well know, in the Rail Act.

We deal with that issue here because, while it was specified in the Rail Act solely for railroads, the Interstate Commerce Commission has taken the view that it may become a concept applicable to released ratemaking for other modes, as you know. And that has been through litigation.

And so I think we would first say to you that it is a dangerous policy to permit a specific legislative provision such as that to go unchallenged. The Congress should decide what mode should be selected for this purpose.

Senator **Packwood**. But here is my question, and I think you are missing what I am driving at. In the concept of insurance generally, most of us are used to deductibles. Usually we have a deductible on health insurance. You have it when you have something happen to your shower. The tub overflows and there might be a $200 deductible. You have it in auto insurance.

What philosophical problem is there with it in cargo liability or claims or anything else?

Mr. **Redding**. Probably the most vocal comment my counsel has made, to specifically answer your question, is that with the movement of goods in interstate commerce there is a considerable problem of cargo theft, and once it becomes recognized that as the carrier mode or individual carriers will take the deductible in a given situation, whether it be a $50 or $100 or $200 deductible, whatever that sum, it is our belief that that would lend some encouragement to cargo theft in the docks and terminals. We have characterized that as a license to steal.

Senator **Packwood**. The deductibility would lend itself to the encouragement of theft?

Mr. **Redding**. Yes, sir, because it would become immediately known to employees and interested parties in the criminal elements that there would be no process by which to investigate any such losses. There would be no legal liability to bring any action, and so that would be a step to encouraging greater theft than otherwise might be the case.

Mr. **Ellis**. Mr. Chairman, in reference to that, we have paid a sum of money to have a product delivered and we expect it to be delivered in good order. So a deductible on it would not be acceptable—if we are the end user for it, we could not live with that, be it $50 or $200. Sometimes we get something that does not cost so much in a big box, and sometimes diamonds are in a little box.

Senator **Packwood**. I think I share your concern about the liability of the shippers. But I think to myself, you order something through the mail and it comes damaged, you have no equivalent of liability, and you sue the post office. If they have damaged, then fine, you sue them under the Federal Tort Claims Act.

But if the shipper damages it, somehow civilization has survived with liability there, I mean, with a very difficult time collecting.

You order something that costs $3,000 or $4,000 and it is damaged and you have a $250 deductible. I do not see why all of a sudden the world collapses if you happen to have that.

Mr. **Ellis**. A couple of things. In the survey the National Association just finished, a large percentage of the members' responses coming back have stated that there is a high percentage that are needing to have better cartons, better shipping containers, whereas at the post office they will not accept it unless it is properly ready for shipment.

Plus we are dealing with larger items. We are dealing with direct hauling and that sort of thing, too.

Mr. **Lavallee**. If I may, Mr. Chairman. In the auto industry, if it is your insurance then yes, there is a deductible. But if you hit somebody else and you are at fault, there is no deductible on what the other person may collect.

And I think that we feel that when shipments arrive damaged for the receiver, the contractor had no responsibility whatsoever in that. I mean, he ordered things in good order. He has already had a loss, a deductible if you would call it, in terms of the delay in not having those goods at the time that he needed them, which can severely damage him.

If it is not delivered at the site where he needs it because it is damaged, he may have tremendous delays in the jobs. Those are not recoverable. All he can do is recover his direct out-of-pocket for repair or replacement.

Senator **Packwood**. And you do not think that, for example, Yellow Freight ought to be able to contract with you and say, we will make you a deal, we will haul this, give us a $250 deductible and we will haul it for 3 percent less than we would otherwise haul it for?

Mr. **Ellis**. No; I do not think so. First of all, we do not pay the freight direct as a general rule on whatever piece of machinery or equipment that we may order. It is f.o.b. the dock where it left, prepaid by the shipper.

He has washed his hands of it. Then that freight bill is added to the invoice for what he sold us that equipment for.

Senator **Packwood**. You have lost me here. I understand when you are talking about the shipper and the f.o.b., but I do not quite follow the thinking.

Mr. **Ellis**. The reason is in most cases they do not know what the freight cost is. If we bought an air-conditioning unit, say, and it cost $10,000, they do not know what the freight cost is exactly to get it there.

Senator **Packwood**. Who is "they," the shipper?

Mr. **Ellis**. The shipper.

So we make a deal on our purchase order saying it is plus freight. So he pays it, but it is prepaid so that when it does come to a job site 40 miles in the back country, our people on the job do not have to give the truck driver $1,500 to get it.

So they prepay it, but we have to assume that responsibility once it leaves or it is f.o.b. the factory. Then it goes over to the freight company with the responsibility to get it there in good condition. But he has been paid for it.

So we have got an $800 or a $900 bill to pay to repair something that he damaged. We need that equipment and it takes another 12 weeks to get it, but we can repair it in 2 weeks. That is where the problem is.

Mr. **Lavallee**. And as a receiver, he has had no say in the trucking carrier unless he is large enough to exert an influence with the manufacturer and say he wants certain carriers or he does not want certain carriers. He has had no say. If you have got no say, I think I would prefer to make sure that I have got full coverage, because I do not know who they are going to ship it on.

Senator **Packwood**. All right, I have no more questions. Again, I apologize for the delay in the hearing today. Thank you very much.

The hearing is adjourned.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned.]

ECONOMIC DEREGULATION OF THE TRUCKING INDUSTRY

FRIDAY, SEPTEMBER 27, 1985

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on Surface Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator **Packwood**. The hearing will come to order.

This is another in our hearings, not now just on oversight but on the issue of whether or not we should further economically deregulate the trucking industry. No one that I know of is talking about deregulating safety or deregulating insurance, and there is good debate about cargo liability and what could be the situation with multiemployer pension plans and withdrawals. All are issues of legitimate concern and legitimate discussion, but we are principally concerned in these hearings with whether or not we should continue with further economic deregulation of the trucking industry.

Those who follow the hearings and my record know that I feel very strongly that what we did in 1980 has worked well, and we should continue on that path.

We have as our first witness today the Secretary of Transportation, Elizabeth Dole, who has just given us a few days ago, the administration's deregulation bill. In many, many respects I find myself in complete accord with it. She is accompanied by Assistant Secretary Scocozza, who used to be with us on this committee. Matt, it is good to have you here also.

Are you ready?

Secretary **Dole**. Yes, sir. Thank you very much.

Senator **Packwood**. Go right ahead.

STATEMENT OF HON. ELIZABETH HANFORD DOLE, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY MATTHEW SCOCOZZA, ASSISTANT SECRETARY OF TRANSPORTATION

Secretary **Dole**. I am delighted to have the opportunity to testify today in support of the administration's Trucking Deregulation Act of 1985. Let me just say at the outset, Mr. Chairman, that I am aware of your keen interest in this important issue, and I just deeply appreciate the time that you have given to this subject.

This bill is, of course, a major part of the overall administration objective to remove inefficient regulatory restraints wherever they are found. We intend to support this legislation vigorously.

Economic regulation of the transportation industries began some 98 years ago. Much of it has now become an expensive paper chase with no offsetting benefits to consumers and is of questionable value to carriers. We took our first step toward regulatory reform of the trucking industry with the Motor Carrier Act of 1980.

The 1980 act has had significant positive effects on the trucking industry. While the recession of 1981–82 caused substantial traffic declines and financial losses for some motor carriers, the industry as a whole has been making the necessary adjustments to today's more competitive environment, and has returned to profitability with the upturn in the overall economy.

With freer entry into the trucking business, the number of firms with Interstate Commerce Commission operating authority has grown from roughly 18,000 in 1980 to 31,000 last year. New price and service options, of course, have been introduced.

Established carriers have become more efficient and more innovative by restructuring their routes, by reducing empty backhauls, by providing simplified rate structures and offering shippers incentives to move freight more efficiently.

In short, the industry has weathered the recession and continues to take advantage of the new freedoms of deregulation. Many opponents of truck deregulation argued that passage of the Motor Carrier Act of 1980 would result in poor service to shippers, with residents of rural areas especially unable to obtain service at any price. These fears obviously have been proven groundless as truck service has remained good even in remote areas in spite of the effects of the recent recession.

Ninety-eight point eight percent of all shippers contacted in the Department of Transportation's research said that service was at least as good as or better than it had been before the Motor Carrier Act of 1980. Even 98.5 percent of shippers in remote areas, that is, 26 miles or further from an interstate highway, found service at least as good as or better than it had been.

I suspect that the trucking industry itself must be wondering at this point what advantages the remaining economic regulations offer. It seems to me the industry today is in a no-man's land, halfway between the familiarity and the protection of a regulated environment and the excitement of a free market.

Reflect for a moment with me on the absurdity of the ICC's tariff filing requirement. Tariffs must be filed for Jiffy Popcorn but not for Orville Redenbacher. Orville Redenbacher is exempt. I will just bring out a couple of examples here because, you know——

Senator PACKWOOD. Which one do you file the tariff for?

Secretary DOLE. You have to file the tariff for Jiffy but you don't have to file the tariff for Orville Redenbacher. And of course you know they both come out at the same end point here. Matt, if you want to help me here.

Senator PACKWOOD. Is there a tariff on that last one?

Secretary **Dole**. Peanuts roasted and salted in the shell are not exempt, while peanuts shelled, salted, not roasted or otherwise, are exempt.

Cranberries partially frozen are of no interest to the ICC, while cranberries purposely quick frozen must be recorded in Washington.

A rate is required for chocolate-coated or glazed raisins but not for raisins that are very lightly coated with honey, cinnamon, or sugar.

Frozen dinners are not exempt, but frozen chicken and frozen seafood dinners are exempt.

Moving away from food, the examples become even more ridiculous. Telephone poles not creosoted are exempt, but tariff is required on poles preventively treated—those used by utility companies.

Railroad ties sawed crosswise are exempt, but railroad ties sawed lengthwise are not exempt. I think I have made my point.

Almost 1.4 million tariffs and tariff supplements will be filed this year, Mr. Chairman—1.4 million tariffs and tariff supplements. I will just point out one other item here. This is just one document that supports a tariff filing. That is just a supporting document. Obviously there are a lot of documents supporting many tariffs. You are looking at 1.4 million tariffs this year, and an average of about 1 million a year hereafter, all of which paper work will be going to the ICC.

Finding a rate on a particular commodity involves combing through at least three, perhaps as many as nine books, in the Middle Atlantic Rate Bureau; 3 trillion rates are on file, 3 trillion, while all nine bureaus probably house as many as 30 trillion. That is why I say we are involved in a massive paper chase.

The cost of tariff filings to the American trucking industry must be tens of millions of dollars a year, money that could be well spent in more productive ways. This is a good argument, I believe, this one in itself, for removing remaining economic regulations on the trucking industry. There are, of course, many other arguments as well.

It simply doesn't make sense, in my opinion, to stay put. The reforms provided by the 1980 act comprised a good first step toward complete deregulation of the trucking industry. I believe that now is the time to take the final steps necessary to complete this process.

Let me discuss very briefly some of the key changes that we propose. Our bill will eliminate all remaining ICC regulation of trucking rates and entry. Interstate motor carriers of property would be able to carry whatever commodities they wish, over whatever routes they wish, and at whatever rates are mutually agreeable to them and their customers.

However, carriers would continue to be required to meet Federal safety and financial responsibility standards in order to engage in interstate trucking operations. A crucial provision of the administration's bill would eliminate antitrust immunity for collective ratemaking.

Antitrust immunity for collective setting of single line rates—the rates for shipments handled entirely by one motor carrier from origin to destination—was removed on July 1, 1984 as provided by the Motor Carrier Act of 1980.

However, many motor carrier ratemaking activities can still be undertaken collectively, including the setting of joint line rates—the rates for shipments carried by two or more carriers—general rate increases, and commodity classification which is the process, as you know, designed to facilitiate ratemaking by grouping commodities into categories that reflect their various transportation characteristics.

The report of the Motor Carrier Ratemaking Study Commission which you so ably chaired, Mr. Chairman, found that collective ratemaking keeps rates higher than they otherwise would be without guaranteeing either rate uniformity or tariff simplicity.

In addition, DOT recently studied interstate and intrastate rates in Florida and Arizona, two States that have removed all economic regulation of intrastate trucking, including the removal of antitrust immunity for the collective setting of intrastate rates. Our finding that intrastate rates rose more slowly than interstate rates provides compelling evidence that removing all remaining antitrust inmunity would provide additional benefits to consumers.

The administration's bill would eliminate the common carrier obligation as well as, after 3 years, eliminate the special antitrust immunity for household goods van line-agent relationships. It would transfer jurisdiction for consumer protection in household goods carriers' operations to the Federal Trade Commission, and prevent States from imposing new regulations on operations that previously were regulated by the ICC.

However, as I said before, economic deregulation will not alter our commitment to safety regulation. In no way will safety be compromised. You have my word. All of this leads us to the conclusion which I hope you will all support that any remaining economic regulation of the trucking industry is unneeded and undesirable because there is ample competition within the industry as well as from other modes of transportation.

Such regulation suppresses managerial initiative and innovation, and it wastes valuable resources that the trucking industry could employ more usefully in improving its productivity. Therefore, economic regulation of trucking must be ended.

For these reasons, I believe the time has come, Mr. Chairman, to take the final step. I would be glad to answer any questions that you or other members of the committee have at this time, and I certainly look forward to working with you as we move along on this very important administration goal of additional economic deregulation.

Thank you very, very much for the opportunity to present my views this morning.

Senator PACKWOOD. Madam Secretary, thank you, and thank you for your leadership in this area. Let us talk about safety a minute, because that is often thrown up as a boogie man by some who are opposed to deregulation, saying we are not worried about safety, we are not thinking about safety.

I have not run across anybody, not in your Department, or anybody else that is talking about backing off of safety, least of all you, who have an exemplary record in that area.

Secretary **Dole**. Well, I am absolutely committed, as you know, Mr. Chairman, to safety across all modes of transportation. Let me comment on that for a moment in terms of what is under way. The 1982 Surface Transportation Assistance Act provided for grants to the States, which I think is a very crucial provision.

I am very supportive of what is happening, and very pleased at the progress that is occurring, because we have now 49 States and territories that are involved in this program, 28 in the implementation stage. As you know, the first stage is providing grants for planning to set up a program to provide for the necessary regulation, regulation budget, et cetera.

Then once the Federal regulations have been adopted, grants can be provided for program implementation, which is basically training of inspectors. Now, last year this particular part of the law was effective for only half of the year. In that half year about 1,000 inspectors were trained, 250 of those for hazardous materials inspection. This is the first full year of the program. We expect a total of about 1,500 inspectors, with another 250 being for hazardous materials.

So, that program is important. I intend to give it strong support. We have new civil penalties, of course, under the 1984 law. We now have the regulatory review panel working on reviewing State laws and regulations. I have taken the review of the Federal regulations, Mr. Chairman, into my own office, so that we will be very closely monitoring and reviewing all of the Federal regulations from a safety standpoint. We will have that completed on time as required by the 1984 act.

In addition, I have a task force on safety which has recently reported on the FAA. They are also working on truck safety as well as highway safety. We will continue with those efforts with the safety net and a number of other important safety initiatives.

Senator Danforth has just come in—I was just now referring to the 1984 legislation, which I think is vital to our safety initiatives as well as the provisions of the Surface Transportation Assistance Act.

Senator **Packwood**. As far as the grant program is concerned, as I recall, the administration recommended freezing it at this year's level, which was around $14 million. This committee authorized $30 million. In your judgment, how much can you wisely use?

Secretary **Dole**. I would certainly support what is being done now. Senator Andrews, of course, is going for, I believe, $20 million at this point, and I am prepared, Mr. Chairman, to support, frankly, the full amount.

Senator **Packwood**. Thank you. We are glad to have that on the record.

We are going to hear arguments today that the rate bureaus are procompetitive, and that they are absolutely essential for shippers to have guideposts so that they know whether they are being gouged or not gouged, and that without the rate bureaus, the shippers will simply be at sea. What is your judgment?

Secretary **Dole**. Well, I feel, first of all, that there are certain aspects of rate bureaus' functions which are perfectly appropriate—gathering information, providing, for example, where there are problems, a unified view of possible solutions, and disseminating research and information to all of the members.

There are many very appropriate functions. The part, of course, that I have difficulty with is the collective ratemaking for joint rates. That is price fixing, which your Commission very definitely determined was not serving a beneficial purpose, but rather was anticonsumer in that it is keeping the rates up higher than they would be without that collective effort.

In terms of getting information on rates, obviously publishing data such as rate books is perfectly appropriate, and I assume that the rate bureaus would do that. Information would be provided as well by the carriers.

If they are not providing information, they are not going to be very competitive, and a lot of it is done, of course, over the telephone. I assume it would continue to be done that way, but I think providing information is a very appropriate function for a rate bureau. I just disagree very strongly with the price fixing aspect.

Senator **PACKWOOD**. For the life of me, I cannot see how they are going to have any difficulty gathering whatever information they want and publishing it. There are dozens of other industries that seem to understand what people charge for services or products in their business, and the Federal Government is never involved in it, and the information gets around somehow.

Secretary **DOLE**. I think the carriers certainly will be providing information. As I say, they are not going to be very competitive if they are not giving the data to the shippers.

Senator **PACKWOOD**. It just never seemed to me that it was our business to interfere with capitalistic acts between consenting adults.

Senator Kassebaum.

Senator **KASSEBAUM**. Thank you, Mr Chairman.

I just would follow on that a bit. Following railroad deregulation, there has been some difficulty, I think, in getting rates posted in such a way that some of the shippers believe they have access to the information that would allow them to be competitive. I apologize for not hearing the full comments that you made on this, but what resource would there be available to shippers?

When you say that you feel that the rate bureaus have not provided this, what access is there for petition when a shipper may feel there has been an unfair opportunity to participate?

Mr. **SCOCOZZA**. Senator, a shipper always has the opportunity to use the services of a broker or a freight forwarder to assist them. A small shipper that perhaps may only need the services of a trucking company on a weekly basis or perhaps a monthly basis wouldn't have tariffs on file in its office, or wouldn't have rate sheets. They would basically call the neighboring carriers to find out what their best rates were, and then determine who they wanted to use.

Senator **KASSEBAUM**. So there has never been any barrier that you feel that has existed or would exist?

Secretary **DOLE**. No.

Senator **KASSEBAUM**. Is there any means for appeal if there is some concern regarding this?

Secretary **Dole**. No, but I really don't anticipate that that is a difficulty.

Senator **Kassebaum**. Thank you, Mr. Chairman.

Senator **Packwood**. Senator Long.

Senator **Long**. Mrs. Dole, I arrived a few minutes late this morning, but I did have a chance to discuss this matter with you yesterday, and I think you made an extremely strong case. I don't think it would be fair for me to ask you any questions any further, because I think you have just about sold your side as much as it can be done without hearing the opposition. I know there is somebody in opposition, and I think in fairness I will wait to see what they have to say before I ask any questions, but you have made a very powerful case for your position, and I compliment you on it.

Secretary **Dole**. Thank you, sir. I will just summarize here why I do feel so strongly about this. I think first of all we are looking at a situation where there is a price fixing element which has been shown by the Commission and by other studies to keep the rates higher than they would be normally, which is disadvantageous to the shippers, to the consumers.

I really see no rhyme nor reason for it, with all of this paper chase that is going on. For example, filing for entry or for expansion of service is de facto deregulated now. We are talking about making it de jure. In other words, what you have is all of this paper flow to Washington, and all of these tens of millions of dollars that impact on the industry, as well as Government expenses, and all the rest, for chasing papers. What is the purpose of it? Of all of the rate filing? If you look, I think there are 1,200 shelves of tariffs at the ICC.

Senator **Long**. 1,200 shelves? Not books, but shelves?

Secretary **Dole**. Shelves, yes, and as I mentioned—this might have been before you came in, Senator Long—this is just one supporting document for a tariff, and there are about 1 million tariffs a year. That is the average. Then there are as many as 30 trillion tariffs among the nine rate bureaus, so we are just involved in a massive paper exercise here that is very expensive to all parties involved. Then you must look at what deregulation has produced in the way of more innovative choices, options for service, options for rates. It has basically been a very productive situation, and it just seems to me that the time is right now after 5 years of experience with it to complete the process.

Senator **Packwood**. Senator Danforth.

The **Chairman**. Madam Secretary, thank you for being with us and also for visiting with us individually on this matter. I remember a few years ago visiting with some business people about a tax bill that at the time was pending, and I vividly remember the comments of one of the business people who was present.

He said, you know, we can play by any rules that Congress or the Government sets out for us to play by. Just tell us what the rules are and then stick with them for a little while. He said what we cannot take in American business is constantly changing the rules of the game. We have to be able to plan. We have to have some predictable system. Whatever the system is, we can adjust to it. But just don't keep changing the rules. Of course, we now have a tax bill that is pending, and we may pass it some time. And if we do pass it this year, which I guess is unlikely, I think it will be what, the fourth major tax bill that we will have passed this decade.

Senator **Packwood**. All of which have the word "reform" in them.

The **Chairman**. It used to be we passed one tax bill every 7 years. Now it seems that we are thinking about seven tax bills every year, and people can't adjust to it. Now, that is something of a digression. I am told that the trucking people generally like the tax bill that we are thinking about now, although it will clearly mean some changes for them with respect to depreciation and the investment credit in particular.

In addition to the changes in the tax laws, we have had some specific changes with respect to trucking in this decade. We passed the Motor Carrier Act of 1980. I am sure there are some people who think that that was a great thing for trucking, and others who think that it was a disaster. It depends upon their particular perspective. But it was a major change.

In addition to that, gasoline taxes were increased significantly in 1982, and my concern about proposals for legislating at this time is that are we not just keeping this particular industry too off balance? Should we not give it some time to at least settle down and get its feet on the ground again? Should we not listen to the same advice that I was given with respect to tax legislation, and set out a set of rules and just live with them for a while, or should we constantly be changing the rules?

You know, I have no real doubt in my own mind that if we were to pass your bill or Senator Packwood's bill, as soon as the ink was dry on that bill, some brain trust somewhere would be thinking up a bold new plan for organizing or reorganizing the trucking industry, or a bold new system for taxing it. If I were in their shoes, I would say, my golly, what are they going to do to me next?

So, that is my concern, and you and I have discussed this. I know you don't share that concern, but I would like for you to at least have a chance to express your thoughts on this general area as I have expressed mine.

Secretary **Dole**. First of all, I think there has been time for the dust to settle, so to speak, since the 1980 deregulatory legislation was passed, and there have been 5 years for experience with it. I think the record is clear.

For example, the major concern then without doubt was what would happen to the small shippers, what would happen with regard to rural communities. Our studies are showing, as I mentioned, that 98.8 percent of shippers overall feel that service has not been diminished and is as good or better. Even 98.5 percent of those who live 25, 26 miles away from an interstate are saying service is as good or better.

In 1980 there was concern that if you eliminated antitrust immunity for single line ratemaking, it was going to be a major problem. It was almost a nonevent for 80 percent of the industry. I think that that gives us an indication that what we are doing now in terms of going ahead and completing the removal of antitrust immunity with regard to joint line rates is not likely to be so disruptive.

I think a lot of this is already occurring, Senator Danforth, in the sense of de facto. We are talking about just completing the process and making it very clear, because right now it seems to me the industry is in sort of a never-never land. One foot is over here and one is over here, and it is very different. We need to clarify it. We need to complete the process.

It means getting rid of an awful lot of unnecessary paper work, and all of the rest, which would lift the burden off of the industry. Another aspect that has been mentioned is what would happen with regard to small carriers in terms of setting rates. Most, I think,—or many of them, anyway, are involved in full truckload movements, which is obviously a lot easier situation. So it just seems to me the time is right. There has been an opportunity for the industry to show that they have weathered the recession. The time is right now to go ahead after 5 years of experience.

A number of the things that you mentioned, of course, do impact across our entire economy, and I think that is true of some of the issues that have been brought up. The insurance question, yes, it is a difficulty. It is a difficulty for a lot of companies. It is not just a transportation issue.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator PACKWOOD. As Senator Danforth says, if we go ahead with deregulation, we will be right back into it a year after we have done it, with great brains thinking up new regulatory schemes.

I do not think that is true, and the best example of that for this committee on transportation is the CAB sunset. It is gone, and we do not any longer have any great fights in this committee or in the Congress about how should we regulate the airlines.

Safety is another matter. We never did deregulate safety, but we managed to get out of the regulating of where planes fly and how much they can charge, and how many times they have to stop, and indeed civilization has continued to flourish, and people can fly.

In most cases, there are now more planes, smaller planes, but more planes serving cities, little cities than used to serve them. It has worked out exactly as we hoped. Here is what will happen when we deregulate trucking—and we will eventually some day—all of those companies in the trucking association that did not want to do it, once we do it, would fight tooth and nail to avoid going back to regulation. Just as with the airlines today, only United supported deregulation. All the other major airlines opposed it.

Today you could not drag a single one of them back, even those that are unprofitable, you couldn't drag them back to regulation. They much prefer the system, and the point of regulation—I don't know why I'm lecturing you, Madam Secretary.

The CHAIRMAN. I know who you are lecturing.

Senator PACKWOOD. The point of regulation of the trucking industry is not to benefit the truckers. It is to serve the public. And if there is a better way of serving the public other than regulation, that ought to be the question we are asking, not are we benefiting or not benefiting those who own the trucking companies.

A couple of other questions. There are going to be some residual functions left over when we are done with deregulation, just as there were with the CAB. Something has to be done with them.

What do you think about creating a motor carrier administration in your Department?

Secretary DOLE. I think we have already addressed the main issue there with the reorganization that has just been done at the Department. We now have an Associate Administrator for Motor Carriers, Dick Landis, who has an outstanding record, and is very knowledgeable and experienced in trucking and the safety area, having come from the Arizona Department of Public Safety and has been very active with the motor carrier safety alliance. Dick is now in place and is going to, I think, do great things for us in this area. We have also reorganized so that the safety inspectors are reporting to BMCS and ultimately to Dick Landis. We have changed the organizational structure there, which I think is going to have great pluses.

So, overall, I really resist the idea of a separate administration, Mr. Chairman. I do not think it is a wise thing to do, because you are proliferating the bureaucracy in that you would then have three highway agencies. I am interested in going the other direction and trying to consolidate and provide synergy so that the expertise on hand is available to those in another area rather than separating the expertise into three agencies. More overhead, more expenses and more cost would result from setting up yet another agency.

Senator PACKWOOD. We are going down the same road. We could consolidate all of the motor carrier functions, including safety, in one motor carrier administration within your department.

Secretary DOLE. As you know, I submitted a proposal last session that would have provided for BMCS and NHTSA to be incorporated. I think that what we have done in creating Dick Landis' position does basically solve the issue of higher visibility of the safety function, higher visibility and opportunity for the truck industry to have a point person, someone who is there at the Administrator's elbow.

Overall it is a more efficient way, rather than setting up yet another administration. There are nine administrations now, and I think creating another one just is not the most efficient managerial way to go about it and it certainly is going to mean additional costs.

Senator PACKWOOD. Your bill touches rather lightly on the issue of preemption. It is basically, as you say, the States cannot move into areas that we are leaving.

Secretary DOLE. That is right, antiencroachment provisions.

Senator PACKWOOD. Do you think that is adequate?

Secretary DOLE. I think it is. This would mean that the States would not in any way be able to do what we have just undone. In other words, they could not go back and regulate rates and routes and all the rest of it, so it prevents any return in that sense.

And then, as far as further preemption, basically I feel that we should not preempt. In other words, I am a believer in States' rights and not having to preempt more is necessary to make the system work as we intend it to. I do think that where there is a concern that, because of intrastate regulation, rates are higher or whatever, that there will be pressure because of deregulation at the Federal level and because of what other States are doing, like

Florida, Arizona, Wisconsin, that have totally deregulated, for States to move in a deregulatory direction.

I would like to mention one other point here, and that is that we are working, as you know, with the National Governors Association on the issues of uniformity with regard to tax procedures and registration, because this is a major problem for the truckers and it is something that ought to be resolved. That is where I think we should try in coming months to cut through and come up with a system that makes sense, that would save a lot of costs for the trucking industry and provide for a much more meaningful system.

Senator **Packwood**. Senator Long.

Senator **Long**. Well, you say, Mrs. Dole, that you have really done things since you got up there in that Department. And I think there has never been more activity since it was created and probably never will be again. I just want to congratulate you on the fine job that you are doing, including Union Station. You know, we could not even get Union Station going until you became Secretary, and so we thank you.

Secretary **Dole**. Thank you. That is on target, by the way.

Senator **Packwood**. Is it on budget?

Secretary **Dole**. Everything is rolling along fine.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. No questions.

Senator **Packwood**. Madam Secretary, thank you very, very much for coming. We appreciate your testimony.

Mr. Scocozza, it is good to see you up here.

Secretary **Dole**. We look forward to working with you on this, Mr. Chairman.

[The statement follows:]

Statement of Hon. Elizabeth Hanford Dole, Secretary, DOT

Mr. Chairman and Members of the Committee, thank you for inviting me here today to discuss the Administration's Trucking Deregulation Act of 1985. I might add, Mr. Chairman, those of us who share your interest in trucking deregulation are very pleased that you continue your active involvement in this important issue.

Economic regulation of transportation began some ninety-eight years ago. While such regulation may have served the national interest well for a long time, much of it has become an expensive paper exercise which restricts competition in the industry with no offsetting benefits to consumers. It is now time to eliminate those remaining elements of economic regulation which no longer provide any benefits to shippers or consumers. To accomplish this purpose we have sent to the Congress the Trucking Deregulation Act of 1985 (TDA).

Mr. Chairman, this bill is a major part of the overall Administration objective to remove inefficient regulatory restraints wherever they are found. We intend to support this legislation very strongly and we respectfully urge the Committee to take quick action.

MAJOR PROVISIONS OF THE TDA

The TDA would eliminate all remaining ICC regulation of the trucking industry. More specifically, the bill would:

Eliminate all remaning ICC regulation of trucking rates and entry

Under the TDA, interstate motor carriers of property would be able to carry whatever commodities they wish, over whatever routes they wish, at whatever rates are mutually agreeable to them and their customers. Although existing reforms have already provided carriers with substantial ratemaking freedom, the current process of ratemaking generates a huge "paper chase". Since the ICC almost never rejects a proposed rate, carriers can charge whatever rates they and their customers agree to. However, all rates of motor common carriers must be submitted to the ICC for approval, and such rates still require a brief period of advance notice before they can go into effect. Consider the absurdity of the statutory tariff filing requirements, which still yield a harvest of over a million tariffs annually. Tariffs must be filed for "cucumbers processed into pickles by the ordinary means," while "cucumbers, salt cured" are exempt. Citrus fruit sections that are chilled or semi-frozen are of no interest to the ICC, but if they are frozen, you violate the law if you fail to record the rates in Washington. This simply does not make any sense.

Motor carriers would no longer have to apply to the ICC for operating authority in order to enter the interstate trucking industry or to expand into new markets. However, carriers would continue to be required to meet federal safety and financial responsibility standards in order to engage in interstate trucking operations. Although entry and expansion are relatively easy today, the process of obtaining operating authority still generates a vast quantity of paper work. The ICC recently testified to this Committee that they have granted nearly 80,000 new operating authorities since July 1, 1980. Again, as in the case of rate regulation, few entry applications are even contested, and fewer still are rejected by the ICC. This regulation serves no useful purpose and costs the industry millions of dollars.

Moreover, removal of all entry and rate regulation would encourage the expansion of for-hire trucking service provided by independent owner-operators. Many of these truckers would like to broaden their operations, but they lack the time, expertise, or inclination to file the necessary paperwork with the ICC. The increased participation of owner-operators in for-hire trucking of general commodities would provide new service options for many shippers, especially those in small rural communities, and would enhance business opportunities for owner-operators. Owner-operators would no longer have to pay regulated carriers 30 percent of the rate for the "privilege" of hauling regulated freight.

Eliminate antitrust immunity for collective ratemaking

This is a particularly crucial provision of the Administration's bill. Antitrust immunity for collective setting of single-line rates (that is—rates for shipments handled entirely by one motor carrier from origin to destination) was removed on July 1, 1984, as provided by the Motor Carrier Act of 1980 (MCA). However, many other motor carrier ratemaking activities can still be done collectively, including the setting of joint-line rates (thats—rates for shipments carried by two or more carriers), general rate increases, and commodity classification (a process designed to facilitate ratemaking by grouping commodities into categories that reflect their various transportation characteristics).

The report of the Motor Carrier Ratemaking Study Commission found that collective ratemaking keeps rates higher than they otherwise would be, does not prevent unjust discrimination, and does not guarantee either rate uniformity or tariff simplicity. In addition, DOT recently studied interstate and intrastate rates in Florida and Arizona, two states that have removed all economic regulation of intrastate trucking, including antitrust immunity for the collective setting of intrastate rates. Our finding that intrastate rates rose more slowly than interstate rates provides compelling evidence that removing all remaining antitrust immunity would provide additional benefits to consumers.

Eliminate tariff filing and publication requirements

Although the Motor Carrier Act of 1980 provided motor carriers with increased ratemaking flexibilty, it did not remove the requirement that all motor common carriers publish their rates and file them with the ICC. The Chairman of the ICC recently estimated that more than 1,300,000 tariffs (compilations of rates) will be filed at the ICC this fiscal year. This paperwork burden is especially ironic, since individual shippers seem to rely these days more heavily on price quotes from the carriers themselves than on published tariffs.

In addition to removing this burden, this provision of the TDA would address another issue of concern to shippers and carriers: the situation where a carrier and a shipper agree in good faith upon a discounted rate, but the rate does not get filed at the ICC, and thus is not a "lawful" rate. Many shippers are now being charged the difference between the rate they agreed to and the published tariff. Removing the tariff filing requirement would make it possible for shippers to be sure that the rate they agree upon is the rate they will actually be charged.

Eliminate the "common carrier obligation"

For many years it was assumed that ICC-regulated common carriers, who had a "duty to serve" all points authorized on their certificates, provided such service on a continuous, adequate, and non-discriminatory basis. It was argued that this was the only guarantee of service to small, rural communities and that, under deregulation, these communities would lose all their service.

However, our research has shown that many carriers rarely, if ever, served a great number of communities in their authorized areas. Furthermore, it was found that the ICC did not monitor service and, while the Commission could respond to shipper complaints by sometimes cajoling a carrier into serving a particular shipper, the ICC had virtually never revoked a carrier's authority for inadequate service.

Our many studies also showed that—even before the Motor Carrier Act of 1980—most small rural shippers did not rely heavily on ICC-regulated common carriers. Instead, they used (and continue to use today) a combination of private carriage, parcel post, bus package express, and United Parcel Service for the bulk of their transportation needs. The only change since the MCA is that some shippers in these communities now notice more carriers serving them than before. In addition, the overwhelming majority of small community shippers are quite satisfied with the truck service they are receiving today.

The evidence strongly suggests that the "common carrier obligation" never did guarantee service. With open entry and the elimination of commodity and geographic limitations on carriers, there are thousands of new entrants competing to serve shippers everywhere. Under these circumstances, we firmly believe that removing this obligation will have no negative impact whatsoever on small community service.

Eliminate all ICC truck leasing rules

Since 1935, the ICC has spent a substantial amount of time and effort to determine what sorts of agreements for the leasing of drivers and vehicles are legally permissible. In recent years, the ICC has made a wider variety of leasing arrangements available to for-hire and private carriers, but the process has been a long and costly one (in some instances, involving a legal battle all the way to the Supreme Court).

Our bill would preserve and extend the leasing freedoms provided by the ICC to interstate motor carriers. Such leases should be dictated by considerations of economic efficiency and the mutual needs of the parties involved. Artificial restrictions on the operations of private and for-hire carriers are a carryover from the days of heavy-handed regulation designed to protect regulated for-hire carriers from the competition of owner-operators and private carriers. These restrictions hamper the trucking industry's ability to maximize its productivity, and should be removed as soon as possible.

Transfer jurisdiction for consumer protection in household goods carriers' operations to the Federal Trade Commission

Under the Administration's bill, motor carriers would be subject to the general jurisdiction of the FTC, as are firms in almost all other industries. In addition, the FTC would be required to review the existing ICC household goods consumer protection regulations and streamline them wherever possible. It is our intent that this process should remove any such regulations that are outdated or ineffective in protecting individual consumers.

Eliminate special antitrust immunity for household goods van line-agent relationships after three years

Although the relationship between a household goods van line and its own agents is primarily a "vertical" one typical of franchising arrangements, the relationship may also have "horizontal" aspects. This would be the case wherever an agent provides interstate transportation directly to its own customers in markets also served by its parent van line. Hence, an agent may *compete* with its parent van line as well as serve it as a supplier of trucking services. In addition, some van lines are owned or controlled by their agents, which creates additional antitrust implications. Our bill would remove all antitrust immunity from the household goods carriers, as well as from other carriers.

We do provide a three year deferral of the effective date for the removal of the special antitrust immunity covering the above situations. The three year period is intended to give van lines and their local agents time to develop corporate structures and business relationships that are not based on such antitrust immunity. We recognize this will entail some restructuring of the industry, but we believe the industry can make the necessary adjustments without serious disruption. During the three year period before this immunity is removed, the ICC is given the explicit power to regulate the use of this special immunity, in order that it not be abused.

Prevent States from "encroaching"—imposing new regulations on trucking operations that previously were regulated by the ICC

The Administration bill's "anti-encroachment" provision is designed to prevent states and other levels of government from stepping in and reregulating any aspect of interstate trucking, once the ICC has ceased regulating it.

Although several states have totally deregulated their intrastate motor carriers since 1980, and a number of others never did regulate theirs, over 40 states currently regulate intrastate motor carrier operations to some degree. We do not wish to see the potential benefits of deregulation at the federal level significantly eroded by ambitious but misguided state regulation.

This provision also requires the Department to study the extent to which state economic regulation of trucking creates a burden on interstate commerce, and make any recommendations for change, within two years of enactment of the bill.

Become effective July 1, 1986

We believe the bill should be implemented as soon as possible after enactment. Other than the household goods antitrust exemption, there is nothing in the bill that requires lengthy preparation or phasing in.

In addition, I wish to discuss how the Administration's bill would affect insurance and safety fitness for motor carriers, with the removal of ICC's ability to revoke a carrier's authority if found unfit.

Insurance

The Interstate Commerce Commission is now authorized to establish minimum levels of financial responsibility for motor carriers subject to the jurisdiction of the Commission. These motor carriers, however, are also subject to the financial responsibility requirements of the Department of Transportation set under Section 30 of the MCA, and the Commission may not establish limits lower than those established by the Department. In fact, the Commission has adopted the same limits prescribed by the Department.

Currently, the ICC enforces the financial responsibility requirements for those motor carriers subject to its jurisdiction. Before a cerrtificate or permit is issued, the motor carrier must file evidence of the required amount of financial responsibility with the ICC. The insurance company is held responsible for the required coverage until 30 days after the ICC receives a cancellation notice from the company. If, at the end of this period, the motor carrier has not obtained replacement insurance, revocation proceedings are begun. During recent years, the ICC has processed approximately 12,000 yearly notices of insurance cancellation. For FY 85 that figure will be about 16,000. Over 3,000 of these have resulted in revocation proceedings between October 1, 1983 and August 31, 1985. (All of these figures include buses as well as trucks).

If the Administration's bill is enacted, motor carriers now subject to regulation by the Commission will still be required to comply with the requirements of the Department. The Bureau of Motor Carrier Safety (BMCS) within DOT currently enforces the insurance requirements through safety management audits conducted at motor carrier's places of business. The law provides for civil penalties not to exceed $10,000 for violations of these requirements.

We do not believe that economic deregulation of the interstate motor carrier industry will have an adverse impact on motor carrier compliance with the insurance regulations. Motor carriers would still be required to carry the same levels of insurance. Obviously, we would have to rely more on our safety audits to detect violations and the civil penalties to punish violators. However, this would merely place carriers now regulated by the ICC on the same footing with those other carriers now subject only to the Department's regulations in this area.

The key difficulties which we see in the insurance area, unfortunately, are wholly unrelated to the issue of deregulation. We have received numerous motor carrier complaints about both the lack of liability insurance available to them and significant increases in premium rates when the insurance can be obtained. The motor carrier industry's difficulty stems from the broader problems encountered by the insurance and reinsurance industries.

The insurance industry also has expressed a problem with the term "environmental restoration" whereby, under section 30 of the Motor Carrier Act of 1980, motor carriers are required to obtain insurance which would be available to pay costs incurred in cleaning up spills of hazardous materials. The industry has concerns about possible liability for long term residual damages. Insurers have told BMCS personnel that the insurance industry does not know with certainty what "environmental restoration" includes because there is no statutory definition. Because of this concern, based on the uncertainty, the industry is very reluctant to insurance motor carriers for $5 million or more for such damages.

The origins of the problem are not simple, and the solutions are not simple either. The Department is aware of the problems and is studying it to see what, if anything, should be done.

SAFETY FITNESS RATINGS

BMCS conducts roadside inspections of commercial motor vehicles and their drivers, and also conducts investigations and safety audits of the records and equipment of motor carriers, usually at the carriers' offices and terminals. The results of these inspections, investigations, and audits are used, in part, to determine the motor carriers' fitness ratings.

Under current law, the Department furnishes a report to the Interstate commerce Commission on the safety rating assigned to a motor carrier seeking operating authority from the Commission. The ICC considers this report in granting or denying the requested authority. In the instance of new entrants, the Bureau of Motor Carrier Safety has had to report "insufficient information" safety rating because the carrier has little or no record to serve as the basis for a definitive rating. Pursuant to section 215 of the Motor Carrier Safety Act of 1984, the Department is now working with the ICC to establish a new safety fitness procedure.

If the Administration's bill is enacted, obviously there will no longer be any need for the Department to report its safety ratings to the ICC. However, BMCS will continue to conduct its inspection, investigation, and audit activities, and will continue to assign safety ratings to motor carriers, just as the BMCS now assigns safety ratings to motor carriers *not* subject to ICC regulation. These ratings will serve to identify those carriers which are experiencing safety problems, and will enable the BMCS to direct its resources where they will reap the greatest benefit.

If the Interstate Commerce Commission no longer grants operating authority to certain for-hire motor carriers, as a result of enactment of this deregulation bill, then the Department will no longer be able to appear before the ICC to request that the ICC deny an application for authority or to revoke or suspend existing authority. As a practical matter, however, the existing revocation authority is very rarely used by ICC.

In the future, the Department will have to rely upon other enforcement tools available to it, just as it now must do for non-ICC regulated carriers, which make up the majority or motor carriers subject to DOT safety regulation. The most important of these tools is the civil penalty authority granted to the Department by the Motor Carrier Safety Act of 1984. We believe this authority is adequate and will enable us to successfully secure compliance by motor carriers with the safety regulations.

The Motor Carrier Safety Assistance Program will also greatly assist us in enhancing commercial motor vehicle safety. This program enables us to use Federal money to assist states in placing more state inspectors on the road to check more drivers and vehicles for compliance with the federal and state safety rules. The increased likelihood of detection, coupled with the possibility of significant penalties, are sufficient to assure a high degree of compliance by motor carriers with the safety regulations of the Department.

The Motor Carrier Safety Assistance Program (MCSAP) is now providing funding to the states for this purpose. MCSAP, authorized by the Surface Transportation Assistance Act of 1982, is a cooperative endeavor between the Federal Government and States to enforce uniform federal and state safety and hazardous materials regulations applicable to commercial motor vehicles and their drivers. One of the criteria a state must meet in order to qualify for an implementation grant is that the state adopt and enforce the Federal Motor Carrier Safety Regulations (FMCSR's) or similar state rules that are compatible with the FMCSR's. The objective of the program is to reduce truck and bus involvement in highway accidents.

Fiscal Year 1985 is the first full year of the MCSAP. Forty-nine states are participating in the program, 28 in implementation. The principal initial implementation activity focuses on the area of recruitment, hiring, and training of state enforcement personnel. At the completion of this fiscal year an additional 1,500 state enforcement officers are projected to be trained in uniform roadside inspection procedures and enforcement activities. In addition, state grantees will initiate the development of a Management Information System to compile improved roadside inspection and enforcement data.

Questions have been raised about the effect of relaxed motor carrier entry on highway safety. We have carefully monitored the trucking industry's safety record since implementation of the MCA and have found no statistical evidence linking the presence or absence of economic regulation with the safety performance of motor carrier operations. Truck accident rates through 1983 were about the same level as 1980. Preliminary figures for 1984 show a slight increase, but we have no reason to believe this is the beginning of a deteriorating trend.

Highway safety remains one of the Department's highest priorities. I have established a special Safety Task Force to review the Department's programs to ensure that we are acting in strict compliance with our safety responsibilities. In addition, we will continue to assess the safety record of the motor carrier industry to assure that safety problems are quickly identified and solutions speedily implemented. We are convinced, however, that truck safety can be best maintained by providing appropriate safety regulations, enforcement, and sanctions, rather than by maintaining an outdated economic regulatory framework has no link with safety performance.

RESULTS UNDER THE MCA

The Administration's bill is designed to build on the regulatory reforms achieved in recent years through administrative changes made by the ICC and through the legislative reforms provided both by the MCA and the Household Goods Transportation Act of 1980.

These reforms have worked extremely well. They have removed a considerable regulatory burden on the trucking industry, permitting carriers to increase the efficiency of their operations and to respond more rapidly and effectively to changing market conditions. Motor carriers now compete relatively freely with each other because of both liberal entry policy and removal of inefficient operating restrictions. There is a much more competitive environment, with more service and rate options for shippers, including many small shippers. The great majority of shippers believe the reforms have been advantageous to them. Numerous studies show that the overwhelming majority of rural and small town shippers are also getting service at least as good as before the reforms.

The MCA has now been in effect for more than five years. For much of that time, the trucking industry was burdenend by weak demand for its services. However, even during difficult times, the industry as a whole continued to provide good service to shippers and receivers throughout the nation.

With the freer entry permitted under deregulation, there are now substantially more trucking firms in business. The number of firms with ICC operating authority has grown—from roughly 17,000 in 1980 to almost 31,000 in 1984.

Overall, there is an enormous body of evidence that the MCA has had significant, positive effects on the trucking industry. While the recession of 1981-1982 caused substantial traffic declines and financial losses for much of the industry, the industry as a whole has been making the necessary adjustments to today's more competitive environment.

SERVICE BENEFITS

New price and service options have been introduced. Established carriers have become more efficient and innovative, for example, by restructuring routes, reducing empty backhauls, providing simplified rate structures, and offering shippers incentives to move freight more efficiently.

As impressive as the immediate benefits of deregulation have been, the long-term results may be even more significant. Overall distribution productivity is benefiting from improved information and inventory management systems, as well as from the greater transportation efficiency made possible by regulatory reform. Together, these trends are resulting in a virtual distribution revolution. One executive of a major transportation company believes that the net result has been a 30 billion dollar reduction in annual logistics expenditures in the United States.

FINANCIAL RESULTS

The improvement in motor carrier financial results that began in 1983 continued strongly into the first half of 1984. However, by the fourth quarter of 1984, large carriers' profitability began to weaken. Net carrier operating income decreased during the fourth quarter by 5 percent, and net income was down a little less than one percent. At the same time, tonnage and revenues continued to increase, rising by 8.3 percent and 2.3 percent, respectively.[1] For the first quarter of 1985, operating revenues rose 2.3 percent, but net carrier operating income decreased almost 40 percent, while net income declined by about 49 percent. We believe this has much more to do with increasing costs than changes in traffic. For the twelve months ending March 31, 1985, the larger motor carriers showed gains of 10.3 percent in operating revenues and 5.2 percent in revenue tons hauled. Net carrier operating revenue decreased 8.7 percent to $717.1 million, and net income fell 11.2 percent to $413.2 million, due primarily to the large declines reported by a few carriers. Return on equity decreased to 12.14 percent from 14.77 percent. These figures suggest that vigorous price competition has continued to exert an influence on carriers' profitability as overall economic conditions improved.

We also recognize that the improved financial picture for large carriers reporting to ICC may not carry over to smaller operators. The American Trucking Associations contends that a high percentage of its member firms continue to operate at a loss or with very low profitability. We do not find that to be a persuasive argument, however, for maintaining an outmoded and inefficient system of regulation and price fixing for the industry.

EMPLOYMENT

I am pleased to report that the unemployment rate in the trucking services industry has come down sharply from the recession-induced high of 13 percent in 1983 to 8 percent in 1984, which was only slightly above the rate for the civilian labor force as a whole. Furthermore, it should be noted that total employment in the trucking services industry, including warehousing and storage—based on Bureau of Labor Statistics household survey data—is at its highest level in a decade; and the trucking unemployment rate is at its lowest level since 1979.

BANKRUPTCIES

Some have expressed concern about motor carrier bankruptcies, particularly as failures of large, well-established companies have been reported. It was anticipated at the time of the passage of the MCA that some weaker companies might not be able to withstand the added competition the Act encouraged. In fact, many of the companies that were unable to survive were unprofitable before the MCA and the recession made their traffic base more tenuous. Prior to the MCA, these companies might have been acquired by other carriers for their then valuable operating rights and, thus, avoided bankruptcy.

Many failed carriers were unionized and had difficulty competing with lower cost firms. The Teamsters report that 60 union general freight carriers had failed as of August 1985. Many companies participated in discount wars, not fully aware of the costs they had to cover. Weak management and overly ambitious expansions and mergers also led to some carriers downfalls. Recently, rising insurance costs have reportedly been a contributing cause of some carrier failures.

Moreover, the high degree of correlation between failures of intercity trucking companies, local carriers (who were largely unaffected by the MCA), and total U.S. business failures, strongly suggests that deregulaton has not been the principal cause of motor carrier failures.

The number of ICC-regulated firms that have failed is small, compared to the number operating. According to the number operating. According to Dun and Bradstreet and American Trucking Association statistics, carriers that have failed since 1980 represented less than one percent of all ICC-regulated carriers and about 3 percent of Class II and II carriers (that is, carriers with annual operating revenues of more than $1 million) operating in 1984.

I want to point out, moreover, that well-managed companies—both union and non-union—are thriving. In fact the three largest general freight LTL carriers, United Parcel Service Companies, Roadway Express, and Yellow Freight System—all Teamster companies—have improved their profitability since 1979, and the fourth largest, Consolidated Freightways, has maintained its profitability and increased its market share. And, because of the substantial increase in the total number of firms offering service, customers have not suffered as a result of the bankruptcies.

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[1] It should be noted that, as regulatory reform has made it easier for all types of carriers to compete for traffic, it has become progressively more difficult to interpret the existing data bases (which represent only a limited number of large carriers). For example, a decrease in tonnage hauled by the 100 largest carriers would not necessary mean that overall motor carrier tonnage was down. There could be a corresponding (or even greater) increase in the tonnage hauled by smaller common, contract, and private carriers.

DOT RESEARCH

In addition, I would like to call your attention to the results of our most recent studies of the impact of regulatory reform on various segments of the trucking industry. Research concerning service to small communities and the impact of intrastate trucking deregulation demonstrates that reform continues to work well. The details of our recent research covering small community service and intrastate trucking deregulation in Florida and Arizona were covered in testimony presented by this Department at motor carrier hearings on September 9, 1985. In short, the majority of shippers located in small communities found that service quality and quantity have not diminished. In a study of rate levels, intrastate deregulation has resulted in surprisingly moderate changes in rates, and intrastate rates rose at a slower pace than interstate rates over the same routes.

SUMMARY

According to the majority of shippers and receivers we have interviewed, service since deregulation has been at least as good as before passage of the MCA. Many opponents of truck deregulation argued that passage of the MCA would result in poor service to shippers, with many residents of rural areas unable to obtain service at any price. These fears have been proven groundless, as truck service has remained good—even in remote areas—in spite of the effects of the recent recession.

As the economy improved, truck service has also improved. Let me emphasize that, according to our most recent research, the decline in the quality and availability of truck service predicted by opponents of deregulation has *not* occurred. Small carriers and minority carriers appear to have weathered difficult economic conditions as well as their larger rivals. Service to small and rural communities remains highly satisfactory, even in Florida and Arizona, after they removed all economic regulation from their intrastate trucking industries.

The reforms provided by the MCA brought major progress toward complete deregulation of the trucking industry. We believe that now is the time to consider taking the final steps necessary to complete that process. The Administration's bill builds on the evidence and recommendations of the Motor Carrier Ratemaking Study Commission, and the successes we have seen achieved as a result of partial deregulation. The evidence compiled shows clearly that the remaining antitrust immunity for collective ratemaking has raised rates unnecessarily and has not prevented undue discrimination in the rates charged individual shippers.

Furthermore, the entry and rate regulations of the trucking industry that currently remain are unneeded and undesirable. There is ample competition within the trucking industry as well as competition from other modes. Moreover, such regulation suppresses managerial initiative and innovation, and wastes valuable resources that the trucking industry could employ more usefully in improving its productivity.

That concludes my prepared statement, Mr. Chairman, I will now be glad to answer any questions that you or other Members of this Committee may have. I look forward to working with you and the other Members of this Committee toward the very important administration goal of additional economic deregulation of the trucking industry.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. The American Trucking Associations, among others, is advocating creation of a separate motor carrier administration within the Department of Transportation. At the Subcommittee's September 27 hearing, however, you opposed creation of such an administration. Why, specifically, do you believe such an administration is unnecessary?

Answer. We are opposed to the creation of a new motor carrier administration in the Department of Transportation. There are already two operating administrations within the Department which devote substantial effort to motor carrier safety. Creation of a new modal administration would be an expensive and inefficient means of addressing our responsibilities for motor carriers. The newly created position of Associate Administrator for Motor Carriers, located within the Department's Federal

Highway Administration, already provides for enhanced visibility for motor carrier issues and policy and support for the Department's truck safety function.

Question 2. The Motor Carrier Safety Act of 1984 requires the Interstate Commerce Commission and DOT to establish a meaningful safety fitness procedure for truckers seeking initial ICC operating authority as well as for established trucking companies. The Act also strengthened federal motor carrier safety regulations and took steps to achieve uniformity between state and federal motor carrier safety regulations. What action had DOT taken to date to implement the provisions of the 1984 legislation?

Answer. The Motor Carrier Safety Act was enacted on October 30, 1984, and it is too early to do a review of the effectiveness or the experience with safety under the 1984 Act. The Department's implementation plan for the requirements under the Act was completed by May 1985. Each section of the Act has a projected completion date, and staff work is under way to complete the requirements of the implementation plan. This involves both regulations development and required special studies. All of the required studies are underway; however, none has been completed.

Nine rulemaking actions, including one on safety fitness procedures, are under consideration within the Department. One final rule has been issued. The final rule requires evidence of financial responsibility for foreign motor carriers of passengers in the United States. This final rule was published in the *Federal Register* on February 20.

Section 212 of the Act requires timely investigation of employee complaints and protection of complainants. On May 1 new procedures for investigations of complaints were sent to the field staff of the Bureau of Motor Carrier Safety.

Violations of the safety regulations that have occurred since the effective date of the Act are subject to the new civil penalties provided by section 213. These penalties are being used at this time.

Question 3. Section 61 of the Reagan Administration's trucking deregulation bill would prohibit states from regulating interstate carriers in areas where the Interstate Commerce Commission now regulates. The National Association of Regulatory Utility Commissioners, however, testified before the subcommittee on September 27 that they fear that section 61 contains "sweeping preemption" which would preclude states from removing unsafe truckers from their highways. How preemptive is the Administration's bill?

Answer. We do not believe section 61 of our bill contains "sweeping preemption" at all. It simply prohibits states and other governmental bodies from enacting or enforcing any regulations concerning interstate rates, routes or services that were subject to ICC jurisdiction prior to enactment of this bill. This should not impinge on their ability to regulate such activities as they pertain to purely intrastate transportation. Further, the basic federal and state motor carrier safety laws and regulations would be completely untouched by the limited "non-encroachment" provision in the Administration's bill.

Question 4. You stated your opposition to further preemption, other than the anti-encroachment provisions of the Administration's bill. To what extent do state economic regulations over interstate carrier operations serve any useful purpose?

Answer. We believe that the preemption of state regulation of interstate carriers raises a very difficult issue with respect to the proper balance between state and federal powers. The "anti-encroachment" aspect of our bill merely prevents states from being permitted to impose economic regulation on *inter*state operations of carriers. The Administration's bill would require the Department to assess very carefully the evidence with respect to the magnitude of the burdens imposed by state regulation.

Question 5. At the subcommittee's September 20 hearing, the American Automobile Association (AAA) urged Congress to establish a national licensing procedure for drivers of combination trucks and all other trucks weighing 50,000 pounds or more. AAA recommended that DOT be directed to study this issues and report on the feasibility of a national truck drivers' licensing system. What is your opinion of this suggestion?

Answer. We do not need an additional feasibility study. The Department is already developing the "National Driver Register" for all drivers. The purpose of the National Driver Register is to assist state driver licensing officials to identify and exchange information on problem drivers who have been denied a motor vehicle license; whose license has been canceled, revoked, or suspended; or who have been convicted of a serious traffic offense. This system is currently being upgraded in order to speed its response time and make it easier for state licensing officials to use.

In addition, 30 states and the District of Columbia have joined the Driver License Compact, an association of states which have agreed to provide license records to member states. The Driver License Compact is a major step necessary to further improve law enforcement efforts against traffic offenders.

Only when every state in the union adopts single and compatible classified licensing systems and joins the Driver License Compact will these important safety program be totally effective. Since driver licensing is traditionally and appropriately a state responsibility, the Department, the states and the private sector must join together to educate the public on the need for *states* to enact legislation implementing single and classified licensing systems, and to cooperate in the exchange of license information.

Question 6. The International Brotherhood of Teamsters advocates the establishment of labor protection provisions for trucking company employees adversely affected by deregulation. Do you think labor protection for trucking industry employees is necessary?

Answer. No. Employment in the trucking services industry in 1984 was about 159,000 higher than it was in 1979 just before the Motor Carrier Act. Although there were several intervening years when employment fell from 1979 levels, a 1982 General Accounting Office study concluded that the recession was the primary cause. Thus, we do not believe that deregulation has been responsible for any net loss of employment in the industry nor that special labor protection provisions are necessary.

Question 7. Please provide the Subcommittee with a list of studies performed by or for the Department of Transportation on the impacts of the Motor Carrier Act of 1980, along with a brief summary of the major findings of each study?

Answer. Attached [1] is our selected annotated bibliography of studies of the trucking industry since the Motor Carrier Act of 1980.

Senator PACKWOOD. Next we will take Congressman Jim Moody from Wisconsin, who has a truck deregulation bill of his own that he has introduced in the House. Congressman, we are delighted to have you with us this morning. Congratulations on the bill you have introduced in the House.

STATEMENT OF HON. JIM MOODY, U.S. REPRESENTATIVE FROM WISCONSIN

Mr. MOODY. Thank you very much, Mr. Chairman.

I want to thank you for allowing me to testify this morning on the issue of trucking deregulation and for the opportunity to discuss my own proposal, H.R. 3222. I appreciate the leadership that you have shown on this issue in the Senate.

I am pleased that the administration has joined us in this effort. The similarities between the administration's bill and my own bill are far greater than any differences, and I look forward to working with the administration and with this committee on a bipartisan basis.

When I was in the Wisconsin State Senate, Mr. Chairman, I authored the bill which eliminated unnecessary and burdensome economic regulation which pervaded the trucking industry in Wisconsin. At the same time, however, we toughened up the safety standards and requirements for the trucking industry in my State, and I think all of us in Wisconsin are pleased that trucking deregulation in our State has been so successful.

We now have 5 years of trucking deregulation at the Federal level from the 1980 Motor Carrier Act behind us. I think the time is right to continue those efforts that began 5 years ago.

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[1] The attachments are in the Committee files.

It is also time, to look for ways to improve our Nation's economic and industrial productivity, and international competitiveness. My bill, the National Motor Carrier Productivity and Safety Improvement Act, which I would like, Mr. Chairman, to submit for the record would accomplish these goals.

Senator PACKWOOD. Without objection it will be included by reference.

Mr. MOODY. H.R. 3222, would improve productivity, efficiency, and safety in our national trucking industry. But my bill is not deregulation for deregulation's sake. Instead, it is intended to improve national productivity at a critical time in our nation's economy.

Let me list five key things that the bill would do:

First, it would establish a new class of national carrier, common carrier or private motor carrier serving three or more contiguous States. These national carriers would be able to serve all truck traffic, intrastate or interstate. They would have uniform State regulation fees, fuel taxes, and fare structure taxes.

National Carriers would be subject to DOT safety jurisdiction and would be subject to the antitrust laws of our Nation on both interstate and intrastate traffic.

Second, the bill would eliminate ICC regulation on interstate entry, interstate rates and tariffs and authority to grant antitrust immunity on interstate traffic. It would also broaden backhaul allowance authority.

Third, the bill would transfer noneconomic ICC functions to DOT. Freight claims statutes and regulations, private carrier statutes and regulation, and leasing and interchange statutes and regulations would be transferred to DOT.

Fourth, the bill would transfer from ICC to DOT safety and insurance authority over interstate and national carriers and would require DOT to establish safety and fitness requirements, maintain safety compliance records, and take action against unsafe carriers.

And finally, the bill would continue State regulation and authority over intrastate operations of carriers serving two or less States or three or more States who elected not to become national carriers. It would continue ICC regulatory authority over household goods and over passenger buses.

I believe the benefits of this approach would be significant. It would remove artificial and regulatory barriers to cost-efficient truck companies. Good companies would be able to compete on an even better basis.

It would reduce Federal bureaucracy through the elimination of unnecessary paperwork, as commented on by the Secretary. Forty percent of the Interstate Commerce Commission could be eliminated under my proposal.

It would eliminate useless and artificial cargo categories and it would eliminate expensive and extensive backhaul requirements that now exist.

It would eliminate collective ratemaking and antitrust price fixing immunity by interstate carriers that choose to become national carriers.

It will give shippers a wider range of cargo and service options which would eventually translate into savings for the consumer.

Finally it would centralize responsibility for safety in the Department of Transportation. DOT would establish safety and fitness requirements, maintain safety compliance records, and take action against unsafe carriers.

In conclusion let me thank you for the opportunity to testify and to applaud your leadership, Mr. Chairman, as well as the spirit and manner in which you have conducted these hearings. I look forward to working with you and answering any questions you might have.

Senator PACKWOOD. Thank you, Congressman. How long has Wisconsin had deregulation?

Mr. MOODY. Since 1982.

Senator PACKWOOD. What were the circumstances as to how it came about?

Mr. MOODY. Several of us in the State legislature knew about deregulation at the Federal level. We knew there were productivity improvements and that the consumers were benefiting. The evidence was quite clear, and we felt that the real action now should be shifted to the State level because many States continued to impose counterproductive regulatory restraints on intrastate shipping.

We said, let us go ahead and see if we can do this in Wisconsin. We knew that Florida and Arizona had done it, so we said let us be No. 3, and we went after it. And we had excellent cooperation from the trucking industry.

The trucking industry within Wisconsin was split on the subject, but the more aggressive and well-managed truck companies stepped forward and said: We want to work with you to create a bill that we can have input on. We sat down together, and one by one the rest of the truck companies came along.

There were one or two holdouts, but most of the truck companies went with us.

Senator PACKWOOD. But it was done by a legislative act and not initiative petition?

Mr. MOODY. That is right.

Senator PACKWOOD. Now, it has been in place for 3 years, and of course you followed it closely. What has been the result on service to small rural areas? Have you personally picked up lots of complaints from rural areas, either in terms of shipping out of them or shipping into them, or from people who live in rural areas?

Mr. MOODY. I have followed that issue closely, because that was one of the chief arguments against the bill when it was debated in the legislature. In fact, our Wisconsin DOT has done a study on that. It has shown that almost all rural areas have service at least as good as they had before, in many cases better. They have more frequent service and smaller trucks more suited to their local traffic.

Senator PACKWOOD. That is the same experience Florida has had also.

Could you get me a copy of that report, that Wisconsin report?

Mr. MOODY. Surely, we will.[1]

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[1] The report has been retained in the Committee files.

Senator PACKWOOD. Senator Long.

Senator LONG. Is your bill the same or does it differ from what the Secretary of Transportation, Ms. Dole, just testified for?

Mr. MOODY. Well, it is the same in many areas. In terms of eliminating much of the ICC, it is virtually the same.

Senator LONG. Would you spell out the principal differences and why you think your bill is better than hers?

Mr. MOODY. My bill has some things that the DOT does not. For instance it goes further on preemption for those carriers that have elected on their own volition to become national carriers. If they serve three or more contiguous States, then they would be allowed to move within any State without each State regulatory body being able to control entry or tariffs.

I believe, Mr. Senator, that the real action now goes to the State level.

Senator LONG. Now, you might be right about this, but we have five commissioners down there in Louisiana and I think all of them were familiar when I ran for office. Now, how am I going to live with those guys if I vote to do this?

Mr. MOODY. Well, I probably cannot answer that one.

Senator LONG. Well, I should think that they would resent it. I have not heard a word from them advocating that I vote for anything like this. Do you reckon they would shoot me or just look the other way when I arrive on the scene?

Mr. MOODY. The State regulatory people in Wisconsin had the vision and the statesmanship to recognize that this would be in the interests of the shipping public and the consumers of the State, and they did not fight us. In fact, they cooperated with us in Wisconsin.

Senator LONG. But that is within the State, is it not, when the State legislature did it?

Mr. MOODY. But they worked with us doing the political work prior to the legislative vote.

Senator LONG. They supported it?

Mr. MOODY. They supported it, because they recognized it was in the interest of the consumer.

Let me say that my bill does not run roughshod. It allows trucking companies to elect to be national carriers if they serve three or more States in the way that I indicated.

Senator LONG. If we are going to pass a bill, I think there is a lot of merit in including your amendment in it. But I almost hesitate to call to see how the public service commissions would view this thing, because this would divest them of a lot of their jurisdiction, would it not?

Mr. MOODY. Yes, it would. But in Wisconsin they were being inundated with paperwork.

But they recognized that this in fact was useless paperwork. And there are many other things they continue to do which we did not take away from them, but they in fact welcomed the chance to get out from under all of this paperwork that really was not productive.

Senator LONG. Thank you very much.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. No questions.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. I just wanted to ask if you could envisage extending State preemption in the area of weights, measures, or safety, or what is your view on that?

Mr. **Moody**. My bill strengthens and centralizes the role of safety. Safety is a national issue and we want national standards. We do not want States competing with one another by cutting safety standards to try to lure truck companies into their State.

So we do not deregulate or downgrade safety. In fact, we upgrade it and we centralize it and make it more of a national standard, and I think that is appropriate. We should always separate economic deregulation from safety deregulation in every kind of endeavor, from airlines to trucks.

Senator **Pressler**. What about the area, though, of State preemption, in the area of weights and measurements, for example?

Would you favor State preemption?

Mr. **Moody**. I am not an expert in that area. I know in Wisconsin we did not allow double bottoms, for example. The State was taken to court and it was told that we could not prohibit double bottoms because they travel through Wisconsin from and to other destinations outside of Wisconsin.

So I tend to think that if we are going to talk about increasing productivity and our national competitiveness, which is the heart of this bill then arbitrary State regulation which would make it very difficult to travel through a given State would be unwise.

I am not for State preemption when it comes to impinging on the productivity of trucking.

Senator **Pressler**. Thank you.

Senator **Packwood**. Senator Exon.

Senator **Exon**. Mr. Chairman, thank you.

Congressman, what are the essential differences, if any, between your bill and that that is being promoted by the administration? Are they by and large the same, with the possible exception of details?

Mr. **Moody**. We go further on preemption. If a truck company serves three or more States it may elect to become a national carrier. If they are a national carrier then they can go ahead and compete in each State.

In that regard, we have deregulated in Wisconsin. But Texas has not deregulated. Texas trucks can come into Wisconsin and carry between Milwaukee and Green Bay, but Wisconsin trucks cannot go to Texas and carry between Houston and Dallas.

You see, there is a problem. Once you begin piecemeal of deregulation, it can be a very unlevel playing field.

Also in that regard, the evidence is clear that Texas, for example, and the Texas Railroad Commission, has maintained a very rigorous and anticompetitive stance. It costs more to ship goods between two points in Texas than it does to ship goods the same distance from Senator Long's State to Texas.

We have example after example of how Louisiana truck companies can do better hauling between two points of the same comparable distance if they cross the Texas State line than companies operating only inside Texas.

Another irrationality: United Parcel Service can deliver in Texas, but they cannot pick up in Texas. So some States still cling to many of these very antiproductive, countercompetitive, and uneconomic regulatory structures. Three or four truck companies control 85 percent of the traffic inside Texas. That is not a competitive, proefficiency stance.

So we need some preemption and I think our bill strikes a good balance on that.

Senator EXON. Since you are generally in support of the administration bill, because it is pretty much in line with yours, with some differences, forgetting for a moment the movement of transportation into interstate commerce, what has been the situation in Wisconsin with regard to intrastate commerce, especially in rural areas of the State?

Mr. MOODY. Well, as I mentioned earlier, we had—our own DOT do a study, and the preliminary findings are that it has enhanced service in rural areas. Almost all rural area, are better off.

Senator EXON. The relaxing of the common carrier requirements, then, has not been a problem in the rural area of Wisconsin, as far as you know?

Mr. MOODY. They have not been a problem in rural areas. Our rural areas are now as well served, if not better served, than they were during the regulatory era.

Senator EXON. Thank you, Mr. Chairman.

Thank you, Congressman.

Senator PACKWOOD. Senator Ford.

Senator FORD. I have no questions, Mr. Chairman. Thank you.

Senator PACKWOOD. Any other questions?

Senator LONG. I want to ask one more question. Let me just get this straight now. If we follow your bill, it seems to me that it would not take much doing for anybody to escape the State regulation and to be regarded as—what do you call it, an all-American?

Mr. MOODY. Maybe we should use that title. It sounds good.

No, we call it a national carrier.

Senator LONG. Now, I just want to get it straight, because I want to be sure I understand your bill if I am going to vote for it.

Now, let us assume that some fellow is located in Shreveport, LA, and that is the northwest corner of my State. I should think that all he has to do in order to be a national carrier and not have to fool around with the local commission would be to have, from time to time have one of his trucks make a delivery over to Wascomb, TX, which is practically on the outskirts of Shreveport, and have another one run up—he does not need to go as far as Texarkana, but just get into Arkansas, just as long as he crosses that State boundary.

So just a periodic trip into those two States and he would be a national carrier, I would assume. Is that correct?

Mr. MOODY. That is correct. He would have to hold himself out, though, to serve those markets. He could not just do a midnight run every now and then on his own volition.

Senator LONG. Well, you say "hold himself out." That is like, say, well, look, I am available; if you are interested in having something delivered over to Wascomb, come talk to me.

Now, Wascomb is close enough so that you could take it home with you tonight. So you would think that—you say all he has to do is hold himself out. He has not got to make the trip. Just think about it.

He could just put it on his stationery or something like that.

Mr. Moody. I think that we could certainly head off any kind of frivolous action like that if in the implementing legislation we put out standards for who really is a national carrier and who really does serve three States. I would be very amenable to that language and I am sure we could work that out.

Senator Long. Well, but you see, if you really feel like you are trying to crash through this needless regulation at the State level, then I would not think we would want to set out much in the way of standards that a person would have to comply with.

In other words, if you are going to let him—if you would set out the standard, it looks to me as though he still would not have to do much. If you are recommending the standard, I would not think that you would recommend doing any more than just requiring that he make, what, a trip a day or a trip a week to these two places outside the State. How often would he have to do it under your bill?

Mr. Moody. The idea would be that he would have a bona fide business that really was prepared and able to serve those markets.

Senator Long. You say "prepared." That does not mean that he has to serve. He is just available.

Mr. Moody. If he was uncompetitive he might not get any business. You are absolutely correct.

If he was using that as a cover to simply operate within Texas, then it would not take much for competitor inside Texas to say, hey, this guy from Louisiana is not really a Texas carrier, he is out from under the Texas Railroad regulatory structure simply by pretending to be a national carrier, I am going to call him on it. And then he would have an incentive to do that.

Senator Long. But it seems to me that, even if you do set some standard that requires a substantial amount of service across State boundaries, that your amendment would still mean that the Texas regulation really would not amount to much, because any substantial carrier, even if he had a substantial amount of business, could make himself a national carrier very easily, could he not?

Mr. Moody. That is right. And frankly, this bill has a preemption element in it. It recognizes that there is very anticompetitive, antieconomic regulation within State boundaries and we want to do something about it for truck companies that really are national carriers.

Senator Long. Well, the thought that occurs to me is that it would be so easy for the intrastate carriers to become national carriers that all you would be regulating is a few little very, very small operations, because everybody who wanted to avoid the regulation could do it very, very easily indeed under your bill.

It might be a little more difficult if you were located right in the heart of Texas, but if you were located in a smaller State anywhere within 50 or 60 miles of that State border, it would be no problem at all to making yourself—that is what I am saying, there would be no problem at all to becoming an interstate or national carrier.

Mr. MOODY. Well, we want to encourage that. I think that will go a long way toward improving our economic performance in this sector that is so important to transportation.

Senator LONG. Well, the thought that occurs to me is—and you have made a good presentation, but the thought that occurs to me is that if you are going to go as far as you are talking, I do not know why you do not just preempt period and be done with it.

Mr. MOODY. For purely local trucking there is no reason for the Federal Government to get in to preempt that.

But if companies genuinely carry goods across State lines, then I think there is an argument for preemption when we are talking about States like Texas that have such anticompetitive and anti-economic regulations.

Senator LONG. Well, thank you very much.

Mr. MOODY. Thank you.

Senator PACKWOOD. Any other questions?

[No response.]

Senator PACKWOOD. If not, Congressman, thank you very much for coming over and joining us.

Mr. MOODY. Thank you.

Senator PACKWOOD. Now let us move to the Interstate Commerce Commission: Reese Taylor, the Chairman, Heather Gradison, Andy Strenio, Paul Lamboley.

Commissioners, we have a long, long list of witnesses today and, while we do not hold our Cabinet Secretaries and fellow Members of Congress to a time limit, I am going to hold everyone else to a normal 5-minute limit. Your entire statements will be in the record, and it is my intention to run this hearing right straight through, and I assume that means we will go until some time between 1:30 and 2 o'clock.

Mr. Chairman.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY HEATHER GRADISON, VICE CHAIRMAN; ANDREW STRENIO, COMMISSIONER, HOWELL I. SPORN, DIRECTOR OF MOTOR SECTION, OFFICE OF PROCEEDINGS; NEAL LLEWELLYN, DIRECTOR, BUREAU OF TRAFFIC; AND BERNARD GAILLARD, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. TAYLOR. Mr. Chairman, we are delighted to be here on this momentous occasion that we have been anxiously awaiting now for, I guess, over 2 years.

Let me begin, if I may, by introducing those at the table with me this morning. On my right is Vice Chairman Gradison, and on her right is Commissioner Strenio; on my left is Howie Sporn, Director of the Motor Section in our Office of Proceedings; and on his left is Neal Llewellyn, who is the Director of our Bureau of Traffic. I suppose I really ought to introduce him as the keeper of the shelves.

And on his left is Bernard Gaillard who is the Director of the Office of Compliance and Consumer Assistance.

We really do appreciate the opportunity to appear before the subcommittee today to present the views of the Commission on the subject of economic deregulation of the motor carrier industry.

At your motor carrier hearing earier this month, we once again expressed our strong support for further deregulation of the industry. As we informed the subcommittee, the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980.

It is precisely our experience in implementing the Motor Carrier Act that has led us to conclude that further motor carrier deregulation is warranted, and warranted now. An unprecedented number of carriers have taken advantage of the eased entry provisions, with a total of 79,032 certificates issued since 1980. In addition to the greater number of carriers to choose from, shippers have more price options as a result of the pricing flexibility that is afforded to motor carriers. Negotiated rates and discount provisions are becoming the normal way of doing business, and there is much less reliance on rate bureau processes and publications. Rate bureaus just are not as important today as they used to be. There has been a decrease in the number of service-related complaints; and finally, service to small communities has been at least as good or better under less regulation as before.

In implementing the Motor Carrier Act, the Commission has reduced economic regulation of the trucking industry in a number of ways. For example, we have shortened the notice periods for rate revisions from 30 days to 1 day's notice for reduced rates and 7 work days' notice for increased rates. That decision has enabled carriers to react more promptly and more often to constantly shifting economic and competitive situations.

The elimination of tarrif filing requirements for contract carriers, in conjunction with the action we took regarding the industry-wide service that contract carriers can now provide, has led to a significant increase in the number of contract carriers and specialized service for the shipping public.

Although no final decision has been served, the Commission has voted at an open conference to exempt from regulation the over-the-road portion of trailer-on-flatcar and container-on-flatcar service by rail-affiliated and other motor carriers.

The Motor Carrier Act was a major first step toward a deregulated transportation market. It introduced greater competition into the motor carrier industry and allowed carriers to operate in a less regulated environment. While these reforms were an excellent beginning, continued entry, rate, and finance regulations no longer appear to serve any useful function. And that is really the important point in my view. Accordingly, the Commission is convinced that the Motor Carrier industry and the shipping public will benefit from further legislative deregulation.

The current proposals to deregulate the motor carrier industry are H.R. 3222, introduced by Congressman Moody on August 1, 1985, and the Department of Transportation bill submitted by the Secretary to Congress on September 12, 1985. DOT has also proposed bills to deregulate freight forwarders and water carriers. And I understand, Mr. Chairman, that you are also about to introduce your own motor carrier deregulation bill.

H.R. 3222 would retain economic regulation of interstate motor carriers of passengers and household goods. A new category of "National Carriers" would be created, consisting of carriers serving three or more contiguous States, and this would include presently unregulated private carriage. The Secretary of Transportation would maintain jurisdiction over the national carriers in matters of productivity and safety.

DOT's Trucking Deregulation Act would also eliminate regulation of motor carriers, but it goes further than H.R. 3222 by deregulating household goods carriers, with the exception of household goods consumer protection, which would go to the Federal Trade Commission. As in H.R. 3222, safety and insurance provisions would be administered by DOT. Also, there is a provision in the DOT proposal for the continuation of antitrust immunity for 3 years in the limited case of housegood goods van line agents.

Both proposals have the same worthwhile goal of removing burdensome motor carrier economic regulation, and either proposal, frankly, would produce an improvement over what now exists. H.R. 3222 has many laudable aspects, but the Commission believes it does not go far enough in deregulating the trucking industry. DOT's proposed legislation is a more straightforward proposal that will provide for more orderly deregulation in our view.

We understand that the subcommittee is particularly concerned with the issue of State preemption. This is a substantive issue that obviously needs to be addressed. Section 61 of the DOT bill prohibits States and other political agencies from enacting or enforcing any regulation concerning interstate rates, routes, or services, once the Federal Government withdraws from the field. It also requires the Secretary of Transportation to conduct an investigation of State regulation of trucking and to make recommendations within 2 years.

So the whole matter of intrastate regulation is subject to study under DOT's bill, Senator Long, for a 2-year period, and they then come forward with a recommendation.

Section 19 of H.R. 3222, on the other hand, goes much further in preempting national carriers from both Federal and State regulation of rates, routes, and services. National carriers are defined as those holding out or providing service in three or more contiguous States, except household goods carriers.

With the reduction in economic regulation of transportation at the Federal level, we are increasingly obliged to examine the role of the States and their public utility commissions. To the extent Congress has addressed this issue recently, in the context of bus and rail carriers, it has resolved the issue largely in favor of Federal preemption of State powers. It seems to us that was a wise choice. While the States should be permitted to exercise police powers in addressing problems which are uniquely their own, they should not be permitted to frustrate national policies, and I think that is the key issue. And I am a former State commissioner. We see both the H.R. 3222 and DOT proposals as offering improvements in the safety area. It seems to us that placing responsibility for safety under one roof makes sense and is likely to improve safety enforcement. We wish to make clear, however, that we do not support preemption of the States from regulating highway safety. They should be encouraged to do so in some sort of standardized manner.

There are also certain technical changes that will have to be made to the DOT bill to ensure that it conforms to the purpose of the legislation. Our staff found a number of those, and they would certainly be happy to work with DOT on these technical changes.

Last, we understand there is interest in the Commission's views on the appropriate effective date of the legislation. I know, Senator Danforth, you are interested in that. We see no need for additional phase-in provisions. We believe that the last 5 years have provided a sufficient transition period for the industry to adjust to a deregulated environment. The regulation that remains is largely meaningless and ineffective, and it should be eliminated without delay in our view.

In closing, the Commission fully supports further motor carrier deregulation. The objectives of the Motor Carrier Act of 1980 have been met, and there is nothing useful to be gained by perpetuating the remaining vestiges of economic regulation.

Now, Mr. Chairman, at the oversight hearing several weeks ago, the issue of why we should proceed now with more deregulatory legislation was raised, and if you will allow me just another minute or two, I would like to give you just a couple of my own personal views on that particular point.

As Secretary Dole indicated in her transmittal letter of September 12, remaining economic regulation of motor carriers, freight forwarders, and water carriers has become an expensive paper chase, with no offsetting benefits to consumers. And that really is an apt description. I totally agree with her assessment.

Currently, our regulations require the filing of hundreds of thousands of motor carrier tariffs—there has been reference to that this morning—which really serve as mere departure points for the actual rates that are charged. In addition, we maintain a detailed licensing scheme, even though at last count, 98.8 percent of all applications were unopposed and in those cases that were opposed, almost all applicants received authority. Clearly, the remaining antitrust immunity for collective motor carrier ratemaking is totally out of sync with the essentially deregulated motor carrier environment that prevails today.

Rate and entry regulation of the trucking industry is simply not needed, because ample competition exists within the industry and from other modes. Continued economic regulation inhibits managerial initiative and the ability to develop innovative responses to market demands. The elimination of regulatory restraints, and particularly the removal of antitrust immunity, should result in a further reduction of rates and increased competition in pricing. Savings incurred by businesses, from not having to meet the paperwork requirements of regulation, can be passed on to consumers. And last but not least, taxpayer dollars will be saved by reducing the role of the Federal Government in regulating transportation.

The Commission has worked diligently to foster a competitive marketplace for trucking services. Nevertheless, the existing regulatory structure continues to place form over substance by retaining unnecessary "paper" requirements and barriers that have accumulated over the past 50 years. The uncertainty of when, and to what extent, this barrier will be lifted legislatively, makes it difficult for carriers, shippers, and the public to plan their future business activities. This uncertainty can only be removed by legislative action now.

In short, many benefits will result from additional deregulation, and there is no good reason for further delay.

Mr. Chairman, so that the record before you may be as informative as possible, I would like to point out that the Commission's full statement does not reflect our close vote on transferring household goods consumer protections to the Federal Trade Commission. Three Commissioners, myself included, voted not to support the transfer of these functions to the FTC.

Also, the Commission's full statement does not address two significant matters. The first concerns DOT's proposal to retain antitrust immunity for household goods van line agents for 3 years. Two Commissioners, including myself, feel that this simple time delay fails to address the fundamental problem of maintaining efficient and beneficial structural relationships between van lines and their agents. The second matter involves retention of the Carmack amendment. Three Commissioners, again including myself, voted to recommend the retention of these uniform liability procedures. The same rationale used in your freight forwarder bill to keep the Carmack amendment for freight forwarders is equally applicable to trucking deregulation in general.

This concludes my personal comments, but I believe my colleagues have some remarks they would like to make.

Senator PACKWOOD. Commissioner Gradison.

Ms. GRADISON. Thank you for the opportunity to be here today. I fully support the Commission's statement. As I have previously stated, I believe that the competitive marketplace effectively regulates the motor carrier industry, and that we have had 5 years of experience to support that conclusion.

I support the elimination of the remaining motor carrier regulation and the sunset of the ICC's operation in all those areas. For that reason, I cannot fully support legislative proposals that leave certain parts of the industry under partial ICC regulation.

In addition, while the State preemption is a sensitive area, we know that there are some very real problems for motor carriers who serve the entire country or regions of the country, and that the Commission and the DOT have studied these matters in the section 19 study of the Motor Carrier Act of 1980. I don't believe that State preemption need further study before action is taken.

I do not want to see 50 different regulatory schemes resulting in the need for a national regulatory agency, such as we have today. Therefore, it is my belief that if we go with the total preemption, we will resolve a potential long-term problem.

With regard to Senator Danforth's question of Secretary Dole relating to timing, the 5 years since the Motor Carrier Act is a transition. The Interstate Commerce Commission has had many close votes in the last 3 years, specifically with regard to the implementation of the Motor Carrier Act of 1980. The changes have been hard to come by.

In order to reduce the uncertainty that the motor carrier industry is faced with, we need legislation. The legislation will provide the certainty that a Commission, with its changes in membership, simply cannot provide. It is with that thought and hope that I submit this respectful request to please do it now.

And with that, I summarize. That is it.

Senator **Packwood**. Commissioner Strenio.

Mr. **Strenio**. Thank you, Mr. Chairman and members of the subcommittee. Thank you very much for the opportunity to appear before the subcommittee today. I am here to reaffirm my strong support for complete economic deregulation of the trucking industry.

This, of course, is the same position taken by the Interstate Commerce Commission as a whole, and I endorse in its entirety the written Commission testimony already submitted to you.

In the interest of time, I ask that my written testimony be accepted for the record so that I may concentrate my remarks this morning upon three basic points.

First, the Motor Carrier Act of 1980 has been a tremendous success in injecting vigorous competition into the trucking industry. The strong praise of deregulation by shipper and consumer representatives at the subcommittee's oversight hearing on September 9 indicates the extent to which shippers and consumers have benefited from the Motor Carrier Act of 1980.

I am hopeful that this reality, coupled with the administration's new initiative, Congressman Moody's bill, and your active and able leadership, will provide the momentum to finish the task that was begun in 1980.

Second, we at the ICC need additional legislation now so that we can end remaining costly and unnecessary regulation. I know you are all familiar with the statistics regarding the monumental paper shuffling at the Commission, as Chairman Taylor so aptly labels it. But allow me to take you through just one recent case to illustrate how pointless the entire exercise has become.

On March 29, 1984, a trucking company applied to the ICC for permission to transport goods for a shipper with plants nationwide. No one opposed this carrier's request. Unfortunately, the carrier made a slight error in its application form by listing the wrong address for the shipper's headquarters. As a result the carrier was not able to serve any of the shipper's facilities other than the one listed on the form, so the carrier had to go back to the Commission to get the mistake corrected.

By a decision served only today, the Commission has given the permission the carrier first applied for 1½ years ago.

Mr. Chairman, this is a copy of today's decision that does the right thing, but 18 months late. I think this case perfectly symbolizes the waste that economic regulation of trucking has caused and will continue to cause until the laws are changed. In this case, employees of both the carrier and the shipper had to devote time and effort to ironing out the problem. The carrier incurred additional legal expense at the Commission, staff in the Offices of Proceedings and Compliance and Consumer Assistance, as well as all of the Commissioners offices had to become involved.

What is probably the largest part of the cost, the lost year and a half of services that the carrier wanted to provide and the shipper wanted to receive, is virtually unmeasureable.

None of this could be considered to serve the public interest. Mr. Chairman, I must sadly report that this case is not an aberration, but is in fact all too typical of what existing law compels the ICC to do.

There are other examples of nonsensical requirements that I can give you if you want to explore this area further.

Third and finally, I think that the trucking industry and all those who work in that industry deserve credit for their success in adapting to the 1980 act overall. The challenge presented by the act was difficult for them, but the results as detailed in earlier testimony have been impressive.

It has now been 5 full years since the 1980 act was passed. The public's best long-term interest, in my view, is not served by further dragging out the final transition that merely delays the inevitable while causing more waste of the type I have described.

Congress now has a golden opportunity to act decisively by freeing us all from this twilight zone of substantial but incomplete economic deregulation.

Please take this opportunity soon.

[The statement follows:]

STATEMENT OF ANDREW J. STRENIO, JR., COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Subcommittee: I appreciate very much the opportunity to appear before this Subcommittee today to reaffirm my strong support for complete economic deregulation of the trucking industry.

The Motor Carrier Act of 1980 has been a tremendous success in injecting vigorous competition into the trucking industry, to the benefit of consumers, shippers, carriers and the general public. The invisible hand of the marketplace has largely replaced the heavy hand of government regulation in determining what services shall be offered at what prices. Motor carriers now have the flexibility to provide the services that best meet the needs and demands of shippers. The strong praise of deregulation by shipper and consumer representatives at this Subcommittee's oversight hearing on September 9, 1985, indicates the extent to which shippers and consumers in particular have benefited from the Motor Carrier Act of 1980. I am hopeful that these expressions of support, coupled with the Administration's new initiative and your active and able leadership, will provide the momentum to finish the task that was begun in 1980.

Legislation is needed now because significant unnecessary regulation remains, and with it its inherent inefficiencies. Take for example one recent case that came before the Commission. Early in 1984, a trucking company had sought, and had been granted, authority to operate as a contract carrier transporting printed matter and paper and paper products between points in the 48 contiguous states under contrast with a publishing firm. Unfortunately for the publishing firm and the trucking company, the latter had given as the publisher's domicile the location of one of its divisions rather than its corporate headquarters. As a result, the carrier was not allowed to serve the publisher's facilities as other locations and had to come back to the Commission for permission to correct the inadvertent oversight. Today, the carrier finally received this permission from the Commission.

This case helps illustrate the wastefulness of the present regulatory regime. Employees both the trucking firm and the publishing company had to devote time and effort to ironing out the problem. The trucker incurred additional legal expense. At the Commission, staff from the Office of Proceedings and Compliance and Consumer Assistance, as well as the Commissioner's offices, were involved. What is probably the largest part of the cost—the "lost" year-and-a-half of services that the carrier wanted to provide and the shipper wanted to receive—is virtually unmeasurable. Moreover, no public interest was served in this case—nor in thousands of other motor carrier entry cases that come before the Commission.

There are equally mind-numbing cases in the area of rate regulation. Although the Commission has reduced the notification requirements to one day for a rate decrease and seven business days for a rate increase, even these diminished requirements impede efficient pricing actions. As a result, various carriers have proposed tariffs that would enable them to offer discounts to shippers based upon rapidly-changing market conditions. The Commission has devoted considerable time and expense trying to determine whether these innovative, market-oriented proposals meet the technical tariff-filing requirements of the Interstate Commerce Act. Legislative removal of these requirements most certainly would result in more efficient pricing actions, to the benefit of consumers and the industry.

Again and gain as I deliberate over the motor carrier cases on which I must vote, I find the conclusion unavoidable that the current level of economic regulation of the trucking industry is not promoting the public interest. There is one other aspect of the present regulatory regime that I find troublesome: the antitrust immunity that allows carriers to fix prices collectively. Although single-line immunity has been lifted, carriers still may discuss and collectively agree upon general rate increases, broad tariff restructurings, and changes in commodity classifications. I see no compelling reason why motor carriers in general should enjoy special premission to engage in collective ratemaking actions that would be illegal if pursued by most companies in the United States.

Although I am opposed to continued economic regulation, I want to stress one point: my support for deregulation applies only to economic controls, not to safety. Strong and sensible safety regulation is essential to protect truck drivers and other employees, other motorists, and the general public.

It think that both H.R. 3222 and the Administration's trucking deregulation bill would strengthen the government's ability to promote safety in trucking. Both bills would centralize the federal government's responsibility in one agency, which should simplify the task of managing the federal effort.

In closing, I reiterate my strong support for total economic deregulation of trucking and my commitment to work with this committee to help bring it about.

Senator PACKWOOD. Thank you, Commissioner.

Mr. Chairman, does the Interstate Commerce Commission keep a log of shipper complaints?

Mr. TAYLOR. Well, our Office of Compliance and Consumer Assistance is sensitive to all of those complaints. I don't know whether they have got a statistical record of every one that has been filed.

Let me ask Mr. Gaillard. Is each one recorded for all time to come? He can better answer that than I can, because they handle it both here and in the field.

Mr. GAILLARD. Yes, Senator, they are recorded.

Senator PACKWOOD. When the shippers testified here about deregulation—and I mean every shipper group I can think of—they all testified that the Motor Carrier Act has worked quite well and they want to go forward with deregulation, and they are here again to testify today.

Is that echoed in a falling off of complaints from shippers over the last 4 years since we have started down the road toward deregulation?

Mr. GAILLARD. Statistically, there has been a significant decrease over the 5-year period, and there still is a continuous decrease this year.

Senator PACKWOOD. Let me ask about rural areas because we are all sensitive to rural areas. I don't pick up any complaints when I go around my State from talking to small-town Kiwanises and Rotaries. The question comes up, what about rural areas? Have the complaints dropped off in those areas?

Mr. GAILLARD. The Commission did do a study on that by the Office of Transportation Analysis, and I think their records did reflect that there was a significant decrease in those areas as well. The data that we receive in the field on complaints does not differentiate, but there has been a constant decrease in all areas.

Senator PACKWOOD. Senator Danforth.

Mr. TAYLOR. I might just add to that, if I might, Mr Chairman, that we have watched the complaints go down and down and down. We still, of course, get some in the household goods area. That seems to be the one that generates the most kinds of complaints. But we have testified, I think, each year now at oversight hearings that the number of complaints we have received has gone exactly like this during the 5-year period, and we have not had any problems with the small communities. I, too, am from a rural State, and I know I would have heard about it, and we haven't.

Senator PACKWOOD. I indicated before, when I was Chairman of the Motor Carrier Ratemaking Study Commission, we held a hearing in Florida, and they had been into deregulation 2 or 3 years by that time. Four State legislatures testified. Three of them were from rural areas, and they just echoed what you have said and others, that they represent these little rural areas in the legislature, and surely if there had been problems in Florida or complaints, they would be the first to know about it. And they said they had had none.

Mr. TAYLOR. You are absolutely right. A couple of years ago, I kept hearing about the Florida experience, and I wanted to really go down and see for myself how it was working. I spent 2 days in Florida and talked to legislators and Public Service Commission representatives and the Department of Agriculture where the complaints are now handled. And that is absolutely correct. There has not been a rural community problem.

And you heard from Congressman Moody this morning that there has not been a problem in Wisconsin.

Senator PACKWOOD. Senator Long.

Senator LONG. No questions.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. What is your assessment of the present state of health of the trucking industry?

Mr. TAYLOR. I think they have recovered a little more slowly, Senator, from the recession because they have themselves, and you have, too, referred to the number of whammies they took. Of course, now they are experiencing this insurance problem.

But the fact of the matter is, the trucking industry, I think, is now totally in step with the rest of the economy and doing quite well. They have had some individual difficulties. You have heard a lot about them here. There were a lot of companies under the protective umbrella of regulation that did not know anything about their costs. Some of them had to get a handle on those costs, and those who didn't have experienced some financial trouble.

I think those are the kinds of companies that probably would have had trouble eventually, even if we had not had deregulation. But those companies that have a handle on their costs and have gotten in step with the new environment, I think, are now moving right along with the economic recovery that everybody else is experiencing.

The CHAIRMAN. What has happened in the last 5 years to employment in the trucking industry?

Mr. TAYLOR. Well, what you have seen occur is that the union hold and the Master Freight Agreement approach that went on before deregulation is really not there anymore. You have a lot of nonunion operators now.

I cannot give you any figures. I am sure you are going to hear from the Teamsters next, and they will provide the figures. There has been some disruption in the labor area, no question about it. That was one of the things that, of course, had to be anticipated.

We have seen that happen in the bus area with the Greyhound drivers. It has happened in the aviation industry with pilots. But that is a temporary blip that ultimately I am sure people will adjust to. I don't think that is permanent.

The CHAIRMAN. You mean after they lose their jobs, they will figure out something else to do with their lives.

Mr. TAYLOR. A lot of them may end up running their own trucking companies some day or their own bus company. There are an awful lot of people that are going to stay in trucking, and some of them are going to move out of trucking. I don't know what is going to happen to all of them. There has been an adjustment for labor. Nobody can deny that.

The CHAIRMAN. You have mentioned a number of what you call whammies. What were they? Let's see, one was the recession itself.

Mr. TAYLOR. The recession.

The CHAIRMAN. And one was the 1980 Deregulation Act; right?

Mr. TAYLOR. That absolutely required some adjustments.

The CHAIRMAN. And another was the increase in the fuel tax.

Mr. TAYLOR. The tax situation. And currently I am sure they would add to that list this problem with insurance, which is very intense.

The CHAIRMAN. The insurance problem is another one. Is it more intense, do you think, for trucking than for other industries, or is it about the same?

Mr. TAYLOR. Well, I think it is not just limited to the trucking industries. I think perhaps they have felt it more because the costs have just gone out of sight. I mean some companies have experienced increases, 2, 3, 4, 5, even 600 percent. And it is today the insurance factor that is really more of a regulator than the ICC by far.

The CHAIRMAN. For whatever you think about the wisdom of either the administration's bill or what will be Senator Packwood's bill as you understand it, would one of those bills or some combination also be a whammy?

Mr. TAYLOR. I don't regard it as that, because I agree with the comments that have been made that we have had a 5-year adjustment.

The CHAIRMAN. You think it would have no effect on the health of the trucking industry?

Mr. TAYLOR. The fact of the matter is, Senator, the only thing that is really left in the regulatory store is antitrust immunity. That is the only goodie that is there. Everything else, as far as rate control and entry, is de facto deregulated now.

So what you have got is this silly no man's land where you have to go through all of this paperwork and paper-shuffle and paperchase, whatever you want to call it, and it really does not have any redeeming benefit.

The CHAIRMAN. Why are they all so upset about it?

Mr. **Taylor**. You know, I really don't know. I don't understand how the trucking industry or the Teamsters Union or those who are opposing any further deregulation could possibly take any solace or comfort in what is going on at the Interstate Commerce Commission today with de facto deregulation.

All that is left is antitrust immunity, and I think that is the issue that is the thing they want to bargain about. And it simply does not make sense to keep antitrust immunity with de facto deregulation. The two do not go together.

The **Chairman**. Don't you think there is anything to be said for the position that, look, we have had everything possible happen to us in the last 5 years. Please just let us get our feet on the ground.

Don't you think that that is a reasonable proposition?

Mr. **Taylor**. No, I don't. I think if you resolve the antitrust immunity issue—and I think that is the thing that really has to be addressed and that is what they are really clinging to—the entire trucking industry will tell you that for everything else that is going on, the ICC is just a nuisance and harassment, and for God's sake, let's get rid of them. I think antitrust immunity is the entire issue.

That is really the thing that you are going to have to do something about, I think. I would guess that if you asked some of the trucking people who follow us here today, without antitrust immunity would you like to see the ICC continue on with economic regulation—and I will bet not a one of them would say yes in terms of what is going on today.

Mr. **Strenio**. Senator, if I might just add a footnote regarding the health of the industry, I think that there must be something promising in the industry, just judging by the rate of applications that we are receiving from people that want to enter or to expand service. That is running still at a rate of approximately 1,100 a month after the substantial addition that has occurred in the last 5 years.

So I think there is still some reason a lot of people want to engage in trucking and I think that speaks well for itself.

The **Chairman**. Thank you, Mr. Chairman.

Senator **Packwood**. Senator Pressler.

Senator **Pressler**. Thank you very much, Mr. Chairman.

I would like to say, just for the record, that we did hold official field hearings in Sioux Falls, and we had several shippers who were in disagreement, as well as truckers. And I just wanted to make that statement for the record.

Also, I have a letter I want to insert into the record from the Barber Transportation Co., talking about some of the recent abandonments of service. I could read all of it, but it is a number of points in South Dakota.

If this company is unable to offer scheduled services to really quite critical areas of my State—I would be, in general, in disagreement with the point that rural and small towns and small city areas have not suffered.

Of course, we cannot maintain the same level of service in all instances. There have to be some changes, but I do want to insert for the record, a letter from the Barber Transportation Co. citing--and I would like to have you take a look at it later—some of the great impact on our State that is a very negative impact.

Let me also say that I have received letters [1] from three professors—these items may well be in the record already—saying that a statement was made that there was great difficulty finding anyone with feelings that total deregulation of trucking was not a desirable goal, and that these professors are each people who believe that increased deregulation would be a mistake.

And they are: a professor from Memphis State University, James P. Rikowski, Professor of Transportation and Business Logistics; a professor from Arizona, and a professor from the University of Minnesota. And if their statements have not previously been included in the record [1] I ask unanimous consent that they be placed in the record.

I think these are academics who have written very thoughtful critiques.

Senator PACKWOOD. I think those are already in the record. But if not, we will put them in.

Senator PRESSLER. Let me ask the chairman. I have heard you on more than one occasion talk about the mountain of useless paper-shuffling that takes place at the ICC in the regulatory area. Could you describe this in a bit more detail?

Mr. TAYLOR. Well, it really happens in two areas. People still have to file for authority even though they almost automatically get it, so we are inundated with those applications. As I indicated, most of them are not even protested. And those that are, the protestants rarely prevail because they have the burden of proof and a run uphill.

With regard to tariffs world that you heard about earlier, I have brought Neil Llewellyn with us today, who is the keeper of these, and he can give you some really solid statistics in this area if you are interested. That is just a blizzard of paper, and for no reason at all, because today I think everybody knows that a published tariff rate is really little more than a suggested retail price and what is actually charged is not there. And all of this paper—well, you heard some of it from the Secretary.

Senator PRESSLER. But do we need to totally deregulate the trucking industry to resolve that problem, or is there another solution?

Mr. TAYLOR. Well, I think if you do not deregulate you will keep the paperwork, and I do not think the paperwork benefits anybody.

As I indicated earlier, I think the only real issue that is involved here is this question of antitrust immunity and whether they should be allowed to continue to collectively set joint line rates. Of course, many of the trucking companies want to do that, and the rate bureaus want to do that. But if you take that out of the act, what is left really just does not make any sense.

I happen to think that collective ratemaking does not make any sense either, because I do not think it is compatible with deregulation.

Mr. STRENIO. Senator, may I just give you one quick statistic to highlight that figure? In fiscal year 1984, on the rate side there were 999,602 motor common carrier tariffs filed with the ICC. Of that 999,000-plus number of tariffs filed, exactly two of those proposals were suspended by the Commission.

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[1] See hearing of Sept. 9, 1985, serial number 99-334.

So we are talking about a great deal of paper flowing back and forth, but very little raises any kind of concern for the Commission.

Senator **Pressler**. But can we not eliminate that paperwork in another way?

Mrs. **Gradison**. Well, today there is the technological advances that have been made by computers being able to talk with one another. It makes a much more efficient process than filing this data on paper with the Interstate Commerce Commission, and that is just one area. That technology provides an opportunity to avoid regulation.

Senator **Pressler**. Why do we not do that? The point I am asking, though, is do we need to totally deregulate the trucking industry to address that problem?

Mr. **Taylor**. Well, the problem with tariff filings is that that is something we cannot administratively do. The Commission has been actively engaged in deregulation, as you know. But we are really bumping up against the ceiling now. We cannot go any further.

People have said, well, why do you not just tell the world they do not have to file tariffs any longer? We cannot administratively do that, because there is a law. That would have to be done by Congress.

Senator **Pressler**. But we would not have to go as far as this bill goes to do that. So would you suggest other legislation?

Mr. **Taylor**. I do not think we need another no man's land or another phase-in. I think it is such a nether world now. What is going on at the moment is ridiculous. There is no redeeming public benefit. We should just go ahead with deregulaiton and get it over with and let them all be competitive.

They will manage. They will do real well. A lot of companies are doing very well, those that have a handle on their costs.

Senator **Pressler**. I would ask—and I will not go through all of the points from the December 15 hearing from a lot of the shippers who were complaining, but there are several shippers—I also have a statement from the Maryland Independent Truckers and Drivers Association that I would like to insert for the record.

My time has expired.

Senator **Packwood**. Senator Exon.

Senator **Exon**. Thank you, Mr. Chairman.

Chairman Taylor, you did what the administration appointees frequently do before this and other committees, waive the flag of great prosperity. That great prosperity is not evident in my State of Nebraska today.

I want to ask you a couple of questions with regard to the upcoming testimony before us this morning that I think someone should ask you to clarify what appears to be a discrepancy in your testimony and other testimony that will follow regarding the health of the trucking industry.

We will receive testimony this morning that says that during the first 3 months of 1985 45 percent of the carriers in this industry operated at a loss. Furthermore, bankruptcies in the trucking industry are at an all time high.

Is that your definition of success in the trucking industry, or is this false information in the form of testimony that we are about to receive? There seems to be a conflict. Do you agree?

Mr. TAYLOR. There is, and we always have a conflict every time we have testified. Our Bureau of Accounts has put out a lot of numbers. In fact, at the oversight hearing we submitted some graphs and additional material to support our numbers vis-a-vis the numbers, for example, that you will hear from the Teamsters Union.

Any time anybody looks at any of these issues, you can develop numbers to try and prove something. Our description of what is going on in the trucking industry today is not the same description which I think probably comes out of the ATA testimony. I read very carefully what they said at the oversight hearing, and I think they probably would like the world to believe that the trucking industry is a lot worse off today than, in fact, it really is.

You can always develop numbers on one side or the other to prove any given conclusion that you want to establish. I did not bring Ron Young of our Bureau of Accounts, but we would be glad to submit the financial data we have. I think it is a part of the record, Mr. Chairman, in the oversight hearing. Or I would be glad to come up and visit with you personally about it.

I do not think it is as bleak as the ATA would have you believe.

Senator EXON. Well, I would very much appreciate your coming up to see me, because I think we are going to have conflicting testimony today and I think the health of the trucking industry is tremendously important. And I do not know whether they are right or whether you are right, but it seems to me that it is also quite evident that this is one of the few times that this administration and the Teamsters Union have disagreed; is that right?

Mr. TAYLOR. I guess perhaps that is true. There have been all kinds of allegations made as to why the bill did not come forward sooner. We are just delighted that it is here now. We think it is an important step.

Senator EXON. Well, that conflict between the Teamsters and this administration also confuses me, and maybe you can enlighten me on that. But I would appreciate your helping us on it.

Mr. TAYLOR. I would be glad to come up and visit with you, Senator. I do not think I can enlighten you on the relationships between the Teamsters and the administration, but we will certainly talk about the numbers or anything else you would like to talk about.

Senator EXON. Thank you.

Senator PACKWOOD. Senator Ford.

Senator FORD. Thank you, Mr. Chairman. Just a couple of questions.

Mr. Chairman, I listen to my truckers and I think that the Senator from Nebraska is correct. It is not healthy. They are in and they are going out. They cannot make it. You have got 1,200 new trucking operations, whatever it is. And the unemployment in that arena I think is significant.

And you said that these people that are now unemployed are going to be running bus operations and trucking operations. It is damn hard to raise capital when you are unemployed.

Let me ask you something. When you gave the scenario of 18 months to get an address changed——

Mr. **Strenio**. Yes, sir.

Senator **Ford**. What was so tough about that? I think you indicted yourself, not the process.

Mr. **Strenio**. Well, Senator, I think that is a reasonable point to make on the surface. But I think it does not reflect the situation.

I looked into this particular case and it turns out that, as far as I can tell, the Commission and its employees responded absolutely to the letter all up and down the process. I gave you a condensed version of all of the facts that took place in that particular story, but it turns out that, as far as the Commission moving on the materials as they were submitted to us, the Commission staff did a responsible job.

There were several back and forths required by the law, and the basic point is that there is no reason why we ought to care whether a particular carrier is listing one city or one address or another address. That carrier and that shipper ought to be able to get that service without us having to interfere and worry about whether there has been some kind of typo on the application.

With the volume of cases coming in on both licensing and rates, this kind of situation, I am sorry to report, is not an instance of management error. It is endemic to the entire system.

Senator **Ford**. Do you mean most applications give you the wrong address?

Mr. **Strenio**. No; but why is it that they ought to be having to give an address at all? We get into this process where we have to go through and check all of these things out.

Senator **Ford**. Do you force these people to go through a bureaucratic process to make a point to deregulate?

Mr. **Strenio**. No, sir.

Senator **Ford**. Well, you know, it just does not seem possible to me—and I am not a lawyer, and I am over on this other side. I am probably out there like most of the truckers. I do not understand the law, and daddy always told me: If you know nothing—and I know a little bit—I am an expert.

And so I do not know anything and you know a little bit, I think, and so therefore you are the expert here. If I wanted to amend that application, I made a typo and I wanted to amend that application, you tell me it takes 18 months to get an amendment to a typographical error?

Mr. **Strenio**. Senator, the way the process worked——

Senator **Ford**. That is your process.

Mr. **Strenio**. No, Senator. That is the law. My daddy always brought me up that when Congress writes something on the statute books, if I do not like it I still have to follow it.

Senator **Ford**. You are the first one I ever heard say that.

I wish your daddy and my daddy could have talked.

I just want to give you one example. I had a fellow in the mountains call me that had a problem, and he called Atlanta and Atlanta told him he could not do anything about it, he had better call his Senator. Now, that does not make sense to me. You ought to be able to handle it and handle it expeditiously and not tell him to call the Senator to get it worked out.

And that bothers me considerably, and if you want the case I will give you the case.

Mr. STRENIO. Senator, I very much respect what you are saying. And the basic point that I think we are trying to make here in terms of supporting the deregulation proposal is that your constituent ought not to be having a problem in the first place that needs to go to Atlanta or Washington or a Senator. It ought to be something that is resolved by that person working it out with whomever he wants to transport goods for, and I think that that is what we are trying to do.

Senator FORD. Well, we are talking about interstate here and we are talking about traveling across State boundaries. Now, I have always understood that intra ought to be taken care of there and inter ought to be taken care of here. And to expedite these small, insignificant things just bothers the heck out of me.

And you are not alone in the harsh path most of the constituencies have to follow. I do not care whether it is social security applications or trucking applications or what it might be, but you are symbolic of the problem that they have out there.

Mr. STRENIO. Might I just ask, has your constituent's problem been resolved or is it something that is still pending? Because we would very much like to look at that.

Senator FORD. We sent it to you and we expect an answer in 18 months.

Mr. TAYLOR. Senator Ford, could I just say one thing about the labor situation?

Senator FORD. Well, I am not interested in labor now. I am asking a question about an application. Quit beating the Teamsters in here in this meeting.

Now, Mr. Taylor, let me ask you, why is it you do not support having the consumer practice authority—or the consumer protection authority on household goods transferred to the Federal Trade Commission?

Mr. TAYLOR. I think that is a real mistake. I was on the short end of the stick on that one. There is a problem regarding affording protections for bus passengers and household goods customers, in that they do not have any large trade associations out there running interference for them.

As long as we are doing bus and household goods work, we have the expertise and the background in these areas. The industry would like this authority to stay where it is. To transfer it over to the Federal Trade Commission for a whole new look just to me does not make any sense. I think that is a great mistake.

When we are totally out, if we ever are, of motor carrier regulation and we no longer consider bus issues—and certainly I think we are going to be involved in that for a couple more years—when we are just dealing with rail matters, my personal suggestion would be that it go on over to the Department of Transportation. But I do not think it belongs at the Federal Trade Commission, and the industry does not either.

Mr. STRENIO. Senator, this is a point where the Chairman and I disagree, and I think I may be the only person in this entire room who has served both at the Federal Trade Commission and now currently at the Interstate Commerce Commission.

Based upon my observations of the two agencies, I supported the majority position here that it would be appropriate to transfer consumer protection authority on household goods to the Federal Trade Commission.

Senator **Ford**. Thank you, Mr. Chairman.

Senator **Packwood**. Any other questions?

[No response.]

Senator **Packwood**. If not, thank you very much.

Mr. **Taylor**. Thank you very much, Mr. Chairman. We appreciate being here.

And Senator Exon, I will be up to see you at your convenience.

Senator **Exon**. I appreciate that.

[The following information was subsequently received for the record:]

Questions of Senator Packwood and the Answers

Question 1. It has been alleged that the ICC has implemented the National Transportation Policy of the Motor Carrier Act of 1980 in such a way as to pursue competition as the ultimate goal, in disregard of all other values and goals written into the Act. What is your view of this claim?

Answer. The Commission has a good record on deregulation and has pursued responsibly administrative efforts to vigorously implement the Act. As we have indicated to this Committee before, these efforts have resulted, among other things, in the issuance of an unprecedented number of authorities under our eased entry provisions (over 80,000 certificates since July 1, 1980), increased availability of price and service options such as common carrier discount rates and industry-wide contract service, shortened notice provisions for rate revisions, reduced reliance on the immunized rate bureau process, and, importantly, a decrease in the number of service-related complaints.

Such reforms clearly have resulted in greater competition within the motor carrier industry. However, they also have promoted other principles embodied in the Interstate Commerce Act. Implementation of these reforms has helped the industry to meet the needs of shippers, receivers, and consumers, adjust to changing market demands, productively use equipment and energy resources, earn adequate profits, and improve our competitive and privately-owned motor carrier system.

The Commission continues to seek ways to administratively advance the Act's goals of promoting an economically sound and safe transportation system. However, remaining statutorily mandated entry, rate, and finance regulations impede our efforts to meet completely all of the Act's goals. That is why the Commission has supported further legislative deregulation.

Question 2. I understand that consideration is being given to eliminating the current comprehensive annual and quarterly report forms filed by Class I and II common and contract carriers of property with the ICC. These reports would be replaced with a one-page reporting requirement for only the very largest carriers.

(a) What is the status of the Commission's consideration of this matter?

(b) Don't you believe the Class and II carrier reports serve any useful purpose?

Answer (a) The extended comment period for responding to the notice of proposed rulemaking in Docket No. 38904, "Elimination of Accounting and Reporting Requirements for Motor Carriers of Property," ended October 8, 1985. The Commission's staff is currently reviewing the responses and preparing a final rule. A decision is anticipated by December 31, 1985.

(b) At the present stage of motor carrier deregulation, the reports now being collected by the Commission seem to be more comprehensive than needed for the Commission's limited uses. Accordingly, we have proposed a one-page report consisting of data used on a regular basis by the Commission. Information that is needed on an occasional basis would be collected only when the specific need arises.

A proposal filed in the rulemaking proceeding by Arthur Andersen & Co., on behalf of 16 motor carrier organizations, recommends alternative report forms purporting to meet the needs of accountants, bankers, analysts, insurance providers, shippers and the general public. The proposal concludes that a single reporting system under the jurisdiction of the Commission would probably assure greater uniformity, completeness, and cost effectiveness. The Arthur Andersen proposal will be given full consideration in drafting the final rule.

Question 3. It has been alleged that the Commission has created a climate in which many carriers disregard their duty to file tariffs with the ICC.

(a) To what extend does the ICC exercise any regulatory control over tariff filings todays?

(b) Is there any real need for carriers to continue to be required to file tariffs at the Commission or some other government entity?

Answer (a) The commission has never signaled to motor common carrier industry, through agency decisions, policy statements, or other actions, that the I.C.C. is willing to disregard violations of the statutory tariff requirements. We believe the motor carrier industry is fully aware of the Commission's continuing insistence that the tariff filing requirements be observed, as evidenced by the fact that in fiscal year 1985, the Commission received over 1,000,000 motor tariff publications.

The regulatory controls exercised today with regard to tariff filings are similar to those used prior to the Motor Carrier Act of 1980. Upon demonstration of serious violations of our tariff filing requirements, the Commission is empowered to act, and we stand prepared to do so.

(b) Tariffs are nothing more than price lists, describing the variety of services offered, and the exact price for each service performed. The function of tariffs will necessarily continue between buyers and sellers (even if the nomenclature should change from tariffs to "agreement", "price list", "catalog", etc.).

Whether tariffs should continue to be filed with the ICC or some other regulatory agency is a matter to be determined by the level, if any, of regulatory oversight deemed appropriate by the Congress. If some segments of the transportation industry are to remain under regulatory scrutiny, the filing of carriers' service/price documents can continue to be useful as a monitoring tool. On the other hand, if that regulatory scrutiny is directed only to broad issues of regional or nationwide impact, then there is little to be gained from the receipt by this agency of the details of each carrier's service and price decisions.

Question 4. At the Surface Transportation Subcommittee's September 20 hearing on trucking deregulation, the Shippers National Freight Claim Council asserted that the ICC has allowed motor carriers to incorporate "deductibles" in their rates, despite Congress' "clear intent" to limit their use to rail rate agreements. The Council also asserted that use of "deductibles" in the trucking industry would be contrary to the public interest.

(a) Do you think the ICC has overextended its authority with respect to "deductibles"?

(b) Do you believe that widespread use of "deductibles" in the trucking industry would be harmful to shippers?

Answer. (a) It is true the Commission has permitted motor common carriers to use "deductibles" as a price option in offering services to the public. Essentially, shippers are offered reduced freight rates in exchange for less than full value liability for loss or damage to goods while in the carrier's possession. The "deductible" feature establishes an amount for which the carrier holds no responsibility for loss or damage.

The Commission's permission for extension of the "deductible" to the motor carrier industry has been approved by the courts, following as challenge to that policy by the Shippers National Freight Claim Council. In the decision of the United States Court of Appeals for the Second Circuit, the Court rejected the argument that nonrail carriers were not entitled to the use of deductibles, and the Supreme Court denied a petition for certiorari following the decision of the Court of Appeals.

In light of the courts' actions, we feel confident that we have not overextended our authority by allowing motor carriers the privilege of "deductible" liability.

(b) We do not believe that carriers will have less incentive to safeguard goods in their possession if they do not have to compensate shippers for all losss or damage. This is because competition will prevent such a result. It is simply too easy for a shipper to switch carriers in the event it is disappointed by loss and damage experiences.

Perhaps the anxiety over the potential for abuse can be dispelled by the fact that we have no indication of actual abuse during the past several years when carriers have been permitted to employ "deductible" pricing options.

Question 5. As you know, the Motor Carrier Safety Act of 1984 required Mexican motor carriers operating in this country to obtain a certificate of registration from the ICC stating that the carriers meet U.S. safety and insurance requirements. On September 20, this Subcommittee heard testimony from individuals operating along the U.S.-Mexican border who recommended that Mexican carriers operating along the border not be required to meet these standards. They suggested that not be required to meet these standards. They suggested that carriers be allowed to continue the practices of obtaining insurance on a trip-by-trip, rather than a yearly, basis. In addition, they recommended that Mexican carriers not be required to meet U.S. equipment standards.

(a) What is your view of these recommendations?

(b) If such changes were made to the 1984 Act's requirements, do you believe any safety problems would arise?

Answer. (a) As presently written, the statute does not require "yearly" insurance. A carrier must show proof of insurance initially on obtaining a certificate of registration. Even though the carrier must renew the certificate each year, the proof of insurance on file with the Commission remains in effect, unless the insurance company notifies the Commission that the policy is cancelled. At the point, the Commission would revoke the certificate of registration and the carrier would have to reapply before entering the United States again.

We are not aware of any insurance company that sold trip insurance even before the 1984 Act. What are involved was the issuance of master policies, often to customs brokers or others at border crossings, and the endorsement, trip-by-trip, of individual operators on those policies as the need arose. If trip insurance were actually available to individual certificate of registration holders, and the proof of insurane on the vehicle requirement was extended to include all freight carriers, then this would be a viable alternative to the present system.

Requiring carriers to meet U.S. equipment standards appears to be an important safeguard for safety purposes and only requires foreign carriers to meet the same standards as U.S. carriers. Whether the standards could be modified in some manner to make them more useful for Mexican truckers, and at the same time not create additional safety problems, is a question outside the expertise of this Commission.

(b) If trip insurance were authorized without a comprehensive "proof in the vehicle" requirement, safety problems might not arise, but we do foresee problems related to questions of financial responsibility. Whether compliance with equipment safety standards satisfying Mexican authorities for Mexican transportation would be acceptable under some circumstances is a matter that should be examined by the safety experts at DOT.

Question 6. What is the Commission's position on S. 1252? Would you recommend any changes to this legislation?

Answer. S. 1252, and its companion H.R. 2689, would significantly expand the scope of licensing activity relative to Mexican carriers. These bills would require *all* foreign motor carriers (for-hire and private) to obtain a certificate of foreign motor carrier registration. For-hire carriage of regulated commodities would require a certificate of foreign motor carrier registration. Thus, between 600–700 American corporations along the border in Mexico, whose motor carriers do not now need certificates of registration to transport regulated commodities within border commercial zones, would need authority if the legislation were enacted. Such an expansion involves trade and policy considerations that are beyond our jurisdiction, and are best left for Congress to resolve. We would point out that the Commission has adopted a workable approach to foreign carrier certification under the existing statutory scheme, and we are processing requests for such authority in a timely manner.

Although the additional safety road-worthiness standards, as set out in the bill, are not matters within the Commission's jurisdiction, they appear to form a good basis for evaluation of an applicant's fitness.

Regarding the commercial zone issue, this is the subject of a pending matter now before the Commission in Ex Parte No. MC–37 (Sub–No. 38), "*Petition to Establish a Commercial Zone at Cameron, Hidalgo, Starr, and Willacy Counties, Texas.*"

Senator PACKWOOD. Next we will have Norman Weintraub, chief economist and director of the department of economics for the International Brotherhood of Teamsters, and Paul Locigno, the director of Government relations.

Mr. Weintraub, go right ahead. Your entire statement will be in the record.

STATEMENT OF NORMAN A. WEINTRAUB, CHIEF ECONOMIST AND DIRECTOR, DEPARTMENT OF ECONOMICS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ACCOMPANIED BY PAUL LOCIGNO, DIRECTOR OF GOVERNMENT RELATIONS; AND MICHAEL CONYNGHAM, ECONOMIC ANALYST

Mr. WEINTRAUB. Thank you, Senator, Mr. Chairman.

I am accompanied here by Mr. Mike Conyngham, our economic analyst, and Mr. Paul Locigno, our director of Government relations, who will begin the testimony.

Mr. LOCIGNO. Mr. Chairman, Chairman Danforth, committee members:

We deeply appreciate the opportunity afforded us here today. And I would also request that the written testimony of our general president, Jackie Presser, also be submitted for the record.

Senator PACKWOOD. Without objection.

Mr. LOCIGNO. Thank you, Mr. Chairman.

I would like to briefly discuss some of the callous remarks of Secretary Dole and also Chairman Taylor. Secretary Dole very lightly—to use her words, admitted there were "some losses." And Chairman Taylor said there were "some temporary bleaps."

As you know, Mr. Chairman and committee members, the Teamsters Union is a labor organization. We are not a company. We only represent people, human beings and their families. To us, those terms; "some losses" and "temporary bleaps" are real unemployment. It is economic havoc and social problems for our members and their families.

Those little losses are early retirement with reduced social security and reduced pension. Our members back in the 1930's and our organization did not ask to work under a regulatory scheme, and we also surely did not ask to work under a deregulated scheme.

As everyone knows here, there was no worker protection in the 1980 Motor Carrier Act. Unfortunately, Secretary Dole's remarks, while they were quite humorous and—no pun intended—gave some food for thought, with examples of popcorn and other food staples, but not one word was mentioned about the workers and their families in this regulatory industry; only her concern for popcorn industry.

Not one Department of Transportation official has offered to sit down and meet with the Teamsters and discuss with us and ask, what is this legislation doing to the members of your union?

And also, Mr. Chairman and committee members, we have very serious qualms about the Department of Transportation taking over any additional motor carrier functions. As Mr. Presser's statement for the record has shown, we have very severe problems with their safety record. Chairman Danforth's 1984 Motor Safety Act—for which we actively and enthusiastically supported—unfortunately, DOT has done everything in their power to circumvent the intent of that law.

And with that, Mr. Chairman, I would like to turn it over for Mr. Weintraub to go into some of the economic issues. Thank you.

Mr. WEINTRAUB. Thank you.

In our prior testimony, and we will not repeat it, in front of the oversight hearings, we mentioned there were 60 class 1 and 2 motor carriers that have terminated operations that were unionized. 75,000 people have lost their jobs, and that includes the union and management people.

We believe these people have not found other jobs in the trucking industry. Few, if any, would have the capital or even have the job skill to be owner-operators or start their own trucking company.

I would like to use the available time to report to you what I think is the first survey actually attempted to find out what happened to these people when they lost their jobs. In May 1982, Spector-Red Ball Motor Freight took the chapter 11 route, and terminated operations. They went out of business. They employed over 7,000 people.

Our local 391 in Winston-Salem, NC, Mr. R.V. Durham, president, who is also IBT safety and health director, had his local union this summer mail survey forms to 399 former Spector-Red Ball employees. It is a little over 3 years since Spector-Red Ball terminated.

One hundred eighty-seven or 47 percent of the people responded and sent back completed questionnaires, which included comments which I would urge you to read, the comments are appended to the back of our statement in the workers' own handwriting.[1]

The average age of these people, the 189 respondents, in 1982 was 51 years old, slightly higher than the average age for our general freight trucking industry at the time. They are today 54 years old. They had over 22½ years of service with Spector; 80 percent of the people were over age 45 in 1982.

The people that retired stated that they would have worked on the average almost 8 years longer if Spector-Red Ball had not gone out of business. Two-thirds of the respondents are drivers and dockmen, one-third are maintenance and garage people, and a few office people.

Out of the 187, 127 managed to find some other employment, almost half in trucking, some form of trucking, half in nontrucking. Only 30 of the 187 are working full-time in a union trucking company anyplace, just 16 percent of the total respondents.

Of the 127 that said they were employed, 40 also said they were retired. It is quite clear that these people are working part-time as security guards, lawn maintenance, any form of part-time or full-time work that they can find to upgrade their early retirement. Luckily, under the Teamsters pension fund they can retire at 48 years of age or over and over 20 years of service. However, the pension benefit for age 48 at that time was only $250 month.

Thirty-four of the people or over 18 percent of total respondents with a much higher unemployment rate, are unemployed. Of the 95 that are retired, 40 are still working and 27 are unemployed. About two-thirds of the retirees still would be counted in the labor force by BLS definition.

Most importantly, out of the 127 that are employed, including some 40 that are retired, only 8 people reported that they had a higher income in 1985 than they had in 1982. One hundred sixteen, or almost all of them, reported a substantial drop in their standard of living: loss of houses, taking minimum wage jobs, mental stress. It is in their comments.

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[1] The appendix has been retained in the Committee files.

These people, they were not the beneficiaries of deregulation for whatever good it might have done in the economy. These were the ones that were hurt. This is the type of reports that we received from our local union leaders year after year since 1981.

We ask in our labor protective provisions that this committee pay particular attention to the age discrimination laws. The eight people that did obtain good union jobs (kept their income up) were below age 40. The young workers did much better than the older workers.

I would like to see, and the union would like to see, somebody in Government do the same type of survey. We did a layoff survey in 1981, 1982, 1983, and 1984. The only response we really got was a GAO report which did not like some of the methodology. No Government agency to date has done a layoff survey or attempted to find out exactly what happened to the people.

I wish we would have had a chance to get more questions in the survey: What happened to their health insurance? Their mental stress, et cetera? However, we think this is a needed first step. We insist that this type of information should be gathered before there is any more deregulation.

The Teamsters Union is unalterably opposed to any more deregulation. We request and really feel that the present Motor Carrier Act of 1980 be amended to include labor protective provisions.

Thank you, Mr. Chairman.

Senator PACKWOOD. Mr. Weintraub, as you are aware, I am the author of several labor protection provisions, especially in the airline industry, and we have tried to attach one to the legislation after the *Bilisco* case. And I am sympathetic to that and I would be willing to try it.

Let me ask you this. If you had an adequate labor protection provision, would the Teamsters support further deregulation?

Mr. WEINTRAUB. I seriously doubt it, Senator. But we would certainly consider any legislation.

Senator PACKWOOD. What is the point of truck regulation? What is the purpose?

Mr. WEINTRAUB. Well, the purpose back, as I understand it, back in 1935 with the enactment of the Motor Carrier Act was to protect the public from the chaos in the industry that was caused by the continual turnover of trucking companies in and out of business and the high level of bankruptcies.

Senator PACKWOOD. The public in this case being mainly the shippers, people who get goods or send goods?

Mr. WEINTRAUB. And the general public.

Senator PACKWOOD. Apart from dealing with household goods, the general public probably does not have much knowledge about actual shipping, because they buy things at the store and the store is the one that has contracted with the shipper, probably.

Mr. WEINTRAUB. Yes; correct.

Senator PACKWOOD. Now, since the 1980 act to the best of my knowledge we have had almost no complaints from the general public and accolades from the shippers, the people that actually contract. They think the system is working better, rather than worse.

Now, if that is true and if the purpose of regulation was to aid the shippers, and if deregulation is aiding the shippers, why should we not continue further?

Mr. WEINTRAUB. Well, I am not sure—I believe that we have not seen the end of the impact of the Motor Carrier Act of 1980, because besides the 60 carriers that I mentioned that terminated operations, there is another 15 or 20 that are in danger of termination—15 of the top 40 union carriers are operating at a loss in the second quarter of 1985; 60 have gone out with over 75,000 people. There is not one new entrant in the less than truckload general freight industry.

The big are getting bigger and some of the medium and smaller sized carriers are going out, without the new entry. What you have had is a lot of small entrants, 15,000 to 17,000 new trucking companies. We do not know how much business they are doing because the statistics are not available.

We could be heading to a situation similar to the 1920's, with the proliferation of many, many small carriers doing the truckload and a few carriers with great market power doing the less than truckload business. And I do not think we have seen the end of this yet, Senator.

Senator PACKWOOD. Well, following your testimony, later on this morning one of the associations, NASSTRAC, which represents hundreds, thousands, I do not know how many, of less-than-truckload shippers, is going to say, let us go on with deregulation, it is working fine.

Let me rephrase the question a slightly different way. You mentioned the companies that have gone bankrupt. Is the purpose of regulation either to guarantee profits for trucking companies or jobs for Teamsters?

Mr. WEINTRAUB. No; but I believe the purpose of regulation as set out in the Motor Carrier Act was to assure well-managed carriers an adequate level of return and to maintain fair wages and working conditions. And we note that the Government does not see fit to continue those as part of the policy of the act.

Senator PACKWOOD. Well, I think that is because we concluded that the purpose is to transport goods in this country to the satisfaction of those who buy them and sell them. It is not to guarantee profits to trucking companies, nor is it to guarantee union or nonunion jobs. It is to serve the shipping public most effectively.

They seem to think they are served most effectively by deregulation. If that is true, if what they sense about how they are being treated is true, then what is the justification for regulation?

Mr. LOCIGNO. Mr. Chairman, if I could add. First of all, I would like to clarify something here. General President Presser asked me to convey to this committee that we are unequivocally opposed to any trucking deregulation bill whatsoever.

And as I said earlier, Mr. Chairman, our members did not ask for the regulatory scheme. Congress created the ICC Commission. They have created it, and Congress now in their wisdom wants to do away with it. Our members are just literally pawns on a chessboard.

The point is we represent these members, they were hired and they went to work for an employer. They do not know when they went to work, whether if they were a secretary or a dockworker or a truck driver, they do not even know what regulation is or what it means. From our point of view, this issue is different.

This act also has a responsibility to the motoring public and also to the retail consumers. The shippers in our view are not paramount and this act was not created for the shippers. It was created for the American public, the people that have to work under it and the public that has to be exposed to these large trucks.

Senator PACKWOOD. Well, I mean, separate the issue of safety. We are not talking about deregulating safety. But nobody, as far as I can find—the general public is not complaining about deregulation.

Mr. LOCIGNO. Mr. Chairman, if you would talk to some motoring associations, everyone realizes with all of the new entrants these people unfortunately have the economic incentive to violate the law. They have one or two or three pieces of equipment. They have not realized the gains that they thought by going into the industry. And what it boils down to, when a broker calls up and says he has a load for delivery from one end of the country to the other and you have to take it for $200 less, if you want to work, he is not going to do his maintenance or change those tires. He is going to try to get another trip out of that.

And that is what is going on there, and that is what the DOT and the ICC refuses to admit is happening. And we really believe it is a hoax on the American public.

Senator PACKWOOD. Senator Long.

Senator LONG. What is the prevailing wage for a truck driver, let's say in this area right here? What is the prevailing wage for the truck drivers today?

Mr. WEINTRAUB. Senator, under the national master freight agreement, the general freight sector, which is just one portion of the entire trucking industry, the local cartage pickup and delivery driver in this area would be about $13.71 an hour.

Senator LONG. $13.71 an hour. That does not include the taxes, or does it include the fringe benefits?

Mr. WEINTRAUB. That is the gross wage. That does not include the employer contributions for health and welfare and pension, which would be about another $130 or $132 a week.

Senator PACKWOOD. A week?

Mr. WEINTRAUB. Yes; it would be another $3 and some odd cents an hour.

Senator LONG. So about $3 an hour. But my impression is that a lot of your problem has to do with the fact that you have done a job in obtaining higher wages for your workers, but in doing that you have set up a situation where someone wants to go into business for himself, just buy himself a truck, or start a small company and drive the truck himself as a part of his operation.

He would be able to compete with you, and at those wages I think a lot of people, especially a fellow who can't find himself a decent job and has not got a job is likely to go out there and compete with you.

And doesn't that become a substantial part of your problem in this deregulation?

Mr. **Weintraub**. Yes, Senator. I think there is no doubt that the wages in the Teamster contracts have been good. However, the major competitive problems have been in the truckload sector where people have gone out, so-called owner/operators, and we believe are operating below cost. They have taken away most of the truckload business. In the less-than-truckload, which is very heavily labor-intensive, there has been no new entry, but we have had companies in financial problem and the union and the members, the members voluntarily have helped. We have 14 major trucking companies now that have either voluntarily enacted employee stock ownership plans, with 12- to 15-percent wage reductions, with about 90 percent of the members going along with these plans, or in the process of enacting plans, even without the new entry. The price cutting plus the predatory pricing has caused the problem.

But there is no doubt that the Teamsters have done a good job over the years in negotiating, which is our job, in obtaining good wages and fringe benefits for our members.

Senator **Long**. Well, it would seem to me that that creates a problem. I really don't see how they can complain about it. I mean basically, if some fellow wants to go into business for himself, I mean it could be one of your members, if he wants to go into business for himself and start his own little company and buy himself a truck, and maybe he and his brother or brother-in-law, and maybe even their wives go out there and start themselves a company, be it against your employers or the business, I don't know how we can do anything about it.

I mean by rights, what right do we have to interfere with that?

Mr. **Locigno**. Excuse me, Senator. If I may, I would like to comment on that. First of all, the Teamsters is not opposed to someone attempting to go into the trucking industry or attempting to have wages for himself and his family. That is what the Teamsters are all about, be it union or nonunion. We are opposed to the environment that has been created since the 1980 Motor Carrier Act. By the way, especially in the steel and the special commodity area, approximately, I would say, 17,000 to 22,000 owner/operators, that belong to the Teamsters Union.

Senator **Long**. They are also members?

Mr. **Locigno**. They are also members of our union, so we are not opposed to that at all. It is the new unsafe environment that has been created, we oppose.

Senator **Long**. Well, I would think, if I were an owner/operator, I would pay dues to your union, if for no better reason than that you tend to maintain a rate scale that makes it possible for me to make a decent living. But I don't know how we can very well prevent a trend where, by eliminating regulation that is not necessary, we do create pressure on workers because of pressures on their bosses. In other words, it has been mentioned that 70,000 additional people went into the business, and obviously that creates a lot of pressure on your bosses because a lot of additional competition and know-how, they are going to handle all of that competition, especially when they are losing business and they are compelled to cut rates.

And I guess that in turn puts pressure on you. That is what we are talking about, I guess, isn't it?

Mr. LOCIGNO. Senator, especially when most of the data show that there is a decrease in the tonnage along with the proliferation of new entries. Unlike airline deregulation, the airline companies have the ability to recruit more passengers. The trucking industry cannot cause more goods to be produced in this country to increase tonnage.

Mr. WEINTRAUB. Excuse me, Senator. I believe Chairman Taylor mentioned that 70,000 figure, but that was new certificates or expansion. I don't believe that was the total of new entrants. As I understand it, there were about 15,000 new entrants, all of them the truckload, and no new entrants in the less-than-truckload, the class I or class II carriers.

And it has been a problem. I can also mention that in the previous testimony on oversight, we brought in facts and figures that showed that the nonunion carriers, the ones operating 20 to 25 percent below union wages in the first quarter of 1985, half of them operated at a loss in the first quarter of 1985.

It is not—just wages—you cannot explain the entire behavior by just the relatively high wages of the Teamster carriers.

Senator LONG. Thank you very much.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. Chairman Taylor, when asked what happened to your members who lost their jobs, said, "Well" some of them might end up being presidents of trucking firms. In your survey of what happened to people that had lost their jobs, how many of them ended up being presidents of trucking firms?

Mr. WEINTRAUB. None, sir, that I know of. I assume that the president still gets more than the workers. So they should have had a higher income. Only 8 of the 127 reported that their income in 1985 was higher than it was in 1982, and they were all the younger people which had a much easier time, as you would expect, catching on with another union firm.

The CHAIRMAN. We were told at great length about the number of volumes and the number of pages and the number of shelves of various books and regulations and what-not that exist in the ITC or in the ICC. What is the degree of interest on the part of your members of how many pages or shelves of books exist at the ICC?

Is this something that is of burning concern and interest to them? And, if it is, are they equally concerned, for example, about how many shelves full of letters my office or Senator Packwood's office turns out in a year's time?

Mr. LOCIGNO. Chairman Danforth, to be frank with you, most of our members don't even know what the ICC is. All they know is that they were working for an employer and all of a sudden Congress passed a law and pulled the rug from underneath them.

And there they are, and they come to their union or write letters to the international or go to their local union officers and they ask why. They ask why they can't send their children to college or why they lost their house.

That is what we contend with as a labor union.

The CHAIRMAN. Now, if we were to pass the administration's bill, or we were to pass some alternative to the administration's bill, do you think that that would create more or less employment for the members of your union?

Mr. LOCIGNO. Less, Mr. Chairman.

The CHAIRMAN. Why do you think that?

Mr. LOCIGNO. Because we believe that while the ICC and the DOT say that for all practical purposes, that it is already a deregulated environment, I would respectfully submit that it would just cause more cutthroat competition and more pressure on the big carriers and the people that would pay the price are the small and medium-size carriers.

I agree with Mr. Weintraub, our chief economist, that we will eventually revert back to a pre-1935 environment where you are going to see eight or nine major carriers and that is going to be it.

And we are in the people business. Eventually some of those carriers, yes, would get bigger and we would have new members, but our responsibility is to our present members and their future and that of their families.

The CHAIRMAN. Now, most interest groups that come before Congress and testify on one bill or another have a variety of things that they are interested in, a variety of concerns. And they testify on a lot of legislation.

Where, on your list of concerns and your list of priorities, would be the subject of further trucking deregulation? Is this well down your list, or is this one of a number of things?

Mr. LOCIGNO. I would say this is tops with us, along with the problem with international trade.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator PACKWOOD. Senator Exon.

Senator EXON. Let me go back to something that I am really puzzled about. I would very much appreciate your supplying me with facts and figures to back up the conflicting testimony of others who are going to follow this morning in testimony, with regard to the dire circumstances that the trucking industry is in as of today.

And I understand your indicating that a major reason for that is the trucking deregulation bill. You have testified that going ahead with the lastest proposal by the administration would make that even more complicated. Is that a true statement?

Mr. WEINTRAUB. Yes, Senator. I think each year that we came before the oversight hearings, ICC said things were pretty good or getting better, and they had a list of 50 or 100 carriers. The problem was—and it looked fairly good on paper—problem was they omitted the carriers that went out of business in the meantime. Each year it is a different list.

Right now, we know there are 60 carriers that have permanently terminated operations—large carriers. There are 15 carriers that we represent that have operating ratios over 100, which means they are running at operating losses. Out of 40, there was 1 carrier that just terminated operations 2 or 3 months ago. There are 3 others that are operating in bankruptcy.

If you just keep making a new list of the top 50 or 100 each time and forget about the ones that have gone out of business, you get a little bit of a different picture than what you do if you keep in mind what has happened in the entire 5 years.

And we feel that many of these carriers, not all of them perhaps, but many of them are on the margin and that more deregulation, more rate cutting, some more loss of truckload traffic, could push them over the brink into bankruptcy.

The big difference for our members—because we had bankruptcies before 1980—the big difference is that with regulation there was operating authority. The person who wanted to come into the industry, or another carrier who wanted to expand had to buy the operating authority or somehow obtain it. Under IBT contracts the people came with the operating authority. The unemployed those that would have been thrown out of work when one carrier became bankrupt went on the seniority list of the acquiring carrier.

Now, with deregulation and no operating authority, that does not happen. The new entrants are not under any obligation to use any of the people that were formerly employed in the industry.

Senator EXON. Well, in any event, would you supply me—as chief economist, you must have facts and figures to back up your testimony—could you supply me with the details of that or are they all included in the written testimony that you are giving us this morning?

Mr. WEINTRAUB. No; we will send all of the testimony, Senator, and be glad to, at your convenience, to talk to you. We continually update these statistics. We are in the process of updating the final report for the second quarter as statistics become available.

Senator EXON. Everyone wants to come and see me, and I think this is a tremendously important proposition. But in addition to coming and seeing me, I would like to have it in black and white, in understandable form. Sure, people are going to go out of business, and some are not going to make it. That is the free enterprise system that I think we all believe in.

And that is the way it should be.

Let me, if I can, put aside for a moment, as important as they are, the problems faced by the Teamsters Union and the people that you represent and the overall trucking industry. Let me get down to what is your perception of what kind of basic service is being provided to the shippers and the people who are receiving the shipments through the trucking industry?

Do you have facts and figures to show that those people are better off than they were, regardless of what the Teamsters are paid, regardless of whether the trucking companies make money?

I am interested in two things. Primarily service to the people and safety. What do you have in that area that you think has been good or bad with regard to deregulation?

Mr. LOCIGNO. Senator, we would be more than glad to provide you with that information. We have a safety and health department. Our International, has been studying this issue, and we will try to make it as brief as possible for you with a summary, and submit the reports and data that we have. We would be more than happy to do that.

Senator EXON. My point is that we are concerned, of course, about the health of the trucking industry. But at least this is one Senator that is primarily concerned about what kind of service we are delivering out there.

Mr. LOCIGNO. That is the main purpose, Senator, and that is what the regulatory scheme is about—one of the reasons why Congress created the regulatory scheme was for service.

Senator EXON. One other thing I am confused about, and my time is about up—and let me see if I can—or if you can respond to this. You have testified that you cannot even get in to see the Interstate Commerce Commission representatives. Is that correct? They won't even let you——

Mr. LOCIGNO. No; the Department of Transportation. I didn't want to mislead you. We can meet with the Department of Transportation, but they have had no incentive or enthusiasm or even requested to sit down and discuss the problems of displaced workers in the trucking industry, or what the impact of their noon bill would be upon our people.

Senator EXON. Wasn't there previous testimony, or did I hear it wrong, that they wouldn't even listen to you?

Mr. WEINTRAUB. No; I did not want to give that impression. It is that they have never done any study. Every year we have made a proposal in front of this committee and also the House committee to cooperate fully with any Government study of layoffs and unemployment in the trucking industry, and not one Government official has come forward to talk to us about it.

Senator EXON. One last question, Mr. Chairman, and I don't want to drag this out. You have testified that your members have lost jobs and they cannot send their kids to school. You have testified that employers of your people are losing money and are going bankrupt.

Is that all true?

Mr. WEINTRAUB. Yes, sir.

Senator EXON. I did not misunderstand that?

Mr. WEINTRAUB. No, sir.

Senator EXON. Given that, I still am puzzled by the fact that the Teamsters Union in 1980 and again in 1984 actively supported the Reagan administration. Do I take it, then, that the rank-and-file members of the Teamsters Union do not have input as to regard to the political endorsements that your union makes?

Mr. LOCIGNO. Senator Exon, I am happy you asked that question, because unlike our brothers and sisters in the American Federation of Labor, our union was the only union in America that sent a poll to their members and asked for the Presidential preference.

Our endorsement was based upon the wishes of our membership. And I think it reflects what took place in America because the Presidential election was not even close. Be that as it may, this union has always been opposed to trucking deregulation. This is not the first time we have disagreed with the administration. We have disagreed with them on the tax reform—certain sections—and international trade. And I am sure it will not be the last time.

And I just think that some of the writers in some of the newspapers like to perpetrate that, no matter what the issue is; that the Teamsters are supporting the administration. And there will be areas that we will support the administration in, but our endorsement was based upon the preference of our membership.

Senator EXON. Then your membership must be quite well satisfied with what has taken place under this administration, or either they are not informed.

Mr. LOCIGNO. Our members, Senator, are well-informed. Now, if this poll was taken after this administration——

Senator EXON. I surrender, Mr. Chairman.

Senator PACKWOOD. Wendell.

Mr. WEINTRAUB. Can I just say, Mr. Chairman, in fairness, the Motor Carrier Act of 1980 was signed by President Carter and not by President Reagan.

Senator EXON. But you have testified to a whole series of things here that have been implemented by this administration that then you do not hold them responsible for the implementation of that act?

Mr. WEINTRAUB. That is not true. We do.

Senator PACKWOOD. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

In the essence of time, I will just ask one question, Mr. Weintraub. You stated that with all the new applications for operating authority, not one has been submitted for less-than-truckload; am I correct?

Mr. WEINTRAUB. No; I said there has been not one, to my knowledge, not one new entrant that is class I or class II. There have been many applications for general freight authority. Not one new entrant has reached the size which I think are revenues over the million dollar per year, which would make it a class II carrier.

Senator FORD. Well, I mean you are getting to the point here where you are using figures on me. If you make it so Senator Exon can understand it, send me a copy, will you?

If this deregulation proposal, whosever it might be, do you think that the applications will decrease or increase as it relates to the present trend, as it relates to just one basic category?

Mr. WEINTRAUB. There will be no applications, Senator. There will be no Interstate Commerce Commission, no operating authority, no applications.

Senator FORD. So there is no control, then. It is just everybody on his own?

Mr. WEINTRAUB. Yes, sir.

Senator FORD. What will do, then, to safety?

Mr. WEINTRAUB. Well, Prof. Darrell Wyckoff, who unfortunately passed away a few years ago, from Harvard University in 1978 or 1979 did a survey of the trucking industry and of the truck drivers, independent owner/operators, and he reached the conclusion in his book, "Truck Drivers in America", that there was a positive correlation between the degree of economic regulation and safety; that the higher the degree of economic regulation, the better the safety records.

We think that there will be gaps and that there will be decreases in safety, and that the Congress will have to appropriate great sums of money to do the work that economic regulation is doing. They will have to do it through safety regulation in the Department of Transportation.

Senator FORD. Thank you, Mr. Chairman.

Senator PACKWOOD. What is the size of the Teamsters Union?

Mr. **Weintraub**. About 1.8, 1.9 million people right now, Senator.

Senator **Packwood**. Has it grown or declined in the last 4 years?

Mr. **Locigno**. Mr. Chairman, in the last 2 years it has grown and presently out of our 1.9 million members, less than, I would say, 9 percent are in the regulated trucking industry.

Senator **Packwood**. Put that in terms of numbers. Then you have got about 180,000 in the regulated trucking industry?

Mr. **Weintraub**. Yes; and we have quite a few on layoff.

Senator **Packwood**. How many did you have in the regulated trucking industry at the zenith? How many members?

Mr. **Weintraub**. Excuse me, Senator. That was the regulated general freight industry. The regulated trucking industry, including the United Parcel Service, the Moving and Storage, the Tank and Bulk, would be, our best guess, probably around 350,000 to 400,000 right now.

Senator **Packwood**. Let's separate out, then, and talk about the commercial carriers. Take out the household goods. I assume with United Parcel, your membership has not gone down. Their business has increased.

Mr. **Weintraub**. No; it has gone up. We represent about 100,000 people at the United Parcel Service.

Senator **Packwood**. And I would assume in the household goods industry, it has not dropped much. I mean the business has not gone down. I don't know if you have kept your organization in the household goods industry or not.

Mr. **Weintraub**. I don't know, Senator.

Senator **Packwood**. So where you have had a dramatic decline is in the commercial trucking industry, although you have had a general increase in Teamster membership.

Mr. **Weintraub**. In the last 2 years, to make up for the recession and the deregulation.

Senator **Packwood**. And that the employees in the commercial trucking industry are about 9 percent of your total membership?

Mr. **Weintraub**. Yes, sir.

Senator **Packwood**. Thank you.

Senator Danforth.

The **Chairman**. No questions, Mr. Chairman.

Senator **Packwood**. Thank you very much. We appreciate your testimony.

[The statement follows:]

STATEMENT OF NORMAN A. WEINTRAUB, CHIEF ECONOMIST AND DIRECTOR, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

I. INTRODUCTION

The International Brotherhood of Teamsters, as collective bargaining representative for the majority of workers employed by Class I and II regulated motor carriers of property, is unalterably opposed to the Trucking Deregulation Act of 1985. The regulated motor carriers of property, in particular the general freight motor carriers and employees have not recovered from the impact of the Motor Carrier Act of 1980. The record of the past five years shows exceedingly high levels of bankruptcies and unemployment. Instead of enacting complete and total deregulation, the Congress should instead promptly pass legislation easing the adjustment burdens of those workers who have lost their jobs from the I.C.C. implementation of the Motor Carrier Act of 1980.

II. FINANCIAL CONDITION OF THE GENERAL FREIGHT MOTOR CARRIER INDUSTRY CONTINUES TO DETERIORATE—2ND QUARTER, 1985

In testimony before the Committee on September 9, 1985, the IBT reviewed the financial condition of the unionized section of the general freight motor carrier industry for 1984 and the first quarter of 1985. In addition to the 60 Class I and II motor carriers of general freight (employing over 75,000 persons in 1980,) that terminated general freight operations between July 1, 1980 and August 26, 1985, many other motor carriers of general freight reported losses in 1984 and the first quarter of 1985. Some of these carriers are in danger of going out of business.

Of the 37 Large Class I motor carriers of general freight represented by the IBT, where data is available for the first quarter of 1985, 18 carriers had operating losses. These 18 carriers employ over 40,000 persons.

Preliminary data is now available for the three months and six months ended June 30, 1985 (See Appendix B). Of the 33 carriers under the National Master Freight Agreement or independent IBT agreement the average operating ratio increased from 94.8 for the 2nd quarter of 1984 to 96.6 for the 2nd quarter of 1985. For the same 33 carriers the average operating ratio rose from 96.5 for the First Half of 1984 to 98.0 for the First Half of 1985. Eight of the largest 33 carriers had an operating ratio of 100.0 or higher in the 2nd Quarter of 1985 and an additional seven carriers of the largest forty unionized carriers will post operating losses for the 2nd Quarter of 1985 when final figures are available—a total 15 of the largest 40 unionized carriers posting losses in the best quarter of the year.

As stated in our previous testimony the general freight motor carrier industry continues to lose tonnage and many carriers are doing poorly while the general economy rebounded substantially from the recession of 1981-82.

III. COMPLETE NEGLECT OF THE TRUCKING INDUSTRY EMPLOYEE BY U.S. DEPARTMENT OF TRANSPORTATION

In enacting the Motor Carrier Act of 1980, Congress included as part of the National "Transportation Policy" the following:

"(D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions."

The Trucking Deregulation Act of 1985, as proposed, does not have any reference to labor or the workers that are employed by the regulated motor carrier industry. Despite the fact that the Department of Transportation does not hesitate to claim significant benefits to society from the Motor Carrier Act of 1980, it does not propose to adopt even the extremely limited job bank referal system of Section 35 of the Motor Carrier Act of 1980—a system that has never been implemented.

"Section 3 Congressional Findings" of Department of Transportation's proposed new law states, in part:". . . that available evidence suggests that significant competitive and consumer benefits have been associated with the partial deregulation of the Motor Carrier Act of 1980 and that the remaining regulations are unnecessary and impose costs on society."

If the benefits of partial deregulation are significant and the benefits of total deregulation to society will be even greater, why doesn't the proposed Trucking Deregulation Act of 1985 contain any mention of the industry's employees or any mechanism to determine if any employees will be hurt or adversely affected by its enactment? While the IBT presented an annual layoff survey of its representative local unions in each of the annual Oversight Hearings between 1981-85 conducted by the House and Senate Committees under the Motor Carrier Act of 1980, the I.C.C. and Department of Transportation have continually objected to our findings of high bankruptcies and high unemployment.

Both the DOT and I.C.C. have denied that deregulation or partial deregulation has led to high unemployment, and at the same time both have vehemently objected to the enactment of any labor protective provisions. Neither agency, to our knowledge, has ever conducted a study of the employment impact of the Motor Carrier Act of 1980 or even offered to talk to the IBT about its offer, made at each annual Oversight Hearing, to cooperate fully, along with its local union affiliates, with any U.S. Government study of the impact of trucking deregulation on employment.

IV. THE BURDEN OF DEREGULATION, A CASE STUDY FROM NORTH CAROLINA

Appendix A of this Statement contains a preliminary report of the Teamsters survey of unemployed trucking worker in North Carolina. Each year between 1981 and 1984 we surveyed 35-37 of our representative local unions and found that by 1984 almost 30% of the workers on industry seniority lists in 1980 were on layoff.

Between the Surveys and our listings of carriers that terminated operations we believe that about 40,000-50,000 workers permanently lost their jobs when their trucking industry employer terminated operations.

In 1985, for the first time, we are attempting to determine what happened to a large group of drivers and maintenance workers when a major carrier declared bankruptcy. The preliminary results to date are extremely distressing and disturbing.

Teamster Local No. 391 of Winston-Salem, North Carolina represented 399 drivers, dock and maintenance employees when Spector-Red Ball Motor Freight declared bankruptcy and terminated operations in May, 1982. Spector-Red Ball has been the largest motor carrier to declare bankruptcy. It employed over 7,000 persons in 1981 and had over $400 million in operating revenue. We have been informed by Mr. R.V. Durham, President of Local 391, that the mailing list of addresses is accurate and up-to-date because the people are still waiting to receive their money from the Bankruptcy Court.

Local Union 391 mailed survey forms to all 399 former Spector-Red Ball employees in the summer of 1985. The completed survey forms are being tabulated and analyzed by the Teamsters Economic Department. To date, we have received responses from 187 persons or almost 47% of the total job loss—extremely high response rate.

The average age of the respondent when Spector terminated operations in May, 1982 was 50.8 years (about age 54 today) and the employees had an average of 22½ years of service with Spector. About 85% of the respondents were between ages 45 to 59 in May, 1982. The average age is several years higher than the average age of the unionized general freight motor carrier industry was in 1984. About ⅔ of the respondents were drivers of dockmen about ⅓ were maintenance and garage employees.

Of the 187 respondents, 127 or 68% indicated that they have some type of current employment; however, only 30 of the 187 or 16% are full time union represented employees working in the trucking industry. A total of 49 employees or 26% are working full time in the trucking industry. Of the 127 former Spector employees who are employed, some 40 or 31% of the employed workers also are retired. Jobs include lawn maintenance, janitors and security guards.

It appears that of the 127 employed workers, 66 or 52% of the total employed have left the trucking industry and 61 or 48% are in some part of the trucking industry in either a full time or part time job.

Only 8 of the 127 employed workers or 6% of the employed workers stated that they were making the same or more money than they did at the time of Spector-Red Ball's closing in 1982. Each of the 8 workers is a full time union represented employee working in the trucking industry. The average age of the 8 workers is substantially below the average of all respondents.

On the other hand, 116 of the 127 employed workers or 91% of the employed workers reported a recduction in income between 1982 and 1985. Several of the persons reported the decrease in income of over $30,000 a year. Generally the respondents reported income drops of $10,000 to $25,000 per year. While the data format does not allow us to estimate statistically, it is quite clear that the average income of the overwhelming majority of the respondents in 1985 is substantially below 1982—a large drop in the standard of living.

It is also quite clear that a substantial number of persons (age 50 or over) took advantage of the early retirement provisions of the Teamsters pension plan and are supplementing the reduced early retirement benefit with whatever part time or full time jobs they can obtain. It is clear that those persons can be considered "involuntarily" retired.

A total of 95 respondents or 51% of the total respondents stated they were retired. Of the 95 persons, as stated above, 40 were also employed and an additional 27 are unemployed and looking for work. Sixty-seven of the 95 retirees or 71% can be considered in the labor force by BLS definition. With an average age in 1985 of 54 years old for all respondents it is not surprising that the large majority of the retirees would rather be working. In fact, the average retiree stated that he would have worked an additional 8 years before he planned to retiree if Spector hadn't terminated operations in 1982.

Spector-Red Ball employees represented by Teamsters Local 391 were participants in the Central States, Southeast and Southwest Areas Pension Fund. Participants with twenty or more years of service were entitled to the following retirement benefits:

20 years of service or more and age:	*Monthly benefit*
60 or over	$775.00
57–59	625.00
56	587.50
55	550.00
54	512.50
53	475.00
52	437.50
51	400.00
50	362.50
49	325.00
48	287.50
47	250.00

The above benefits were reduced if the retiree selected the Joint and Survivor Benefit Pension.

Under the National Master Freight Agreement in the early 1980's the average road driver could earn $35,000/year or more and city drivers, terminal workers and maintenance employees could earn between $25,000 and $30,000/year plus be covered by negotiated Health and Welfare Pension Plans paid for by the employer.

The preliminary analysis of the 187 respondents lead us to the following conclusions:

(1) Few workers who lost their jobs obtained equivalent employment in trucking or other industries.

(2) The majority of the workers below age 60 want to find equivalent employment in trucking.

(3) There has been a substantial decrease in the standard of living for the overwhelming majority of the displaced workers whether employed and/or retired.

(4) A large waste of precious manpower and an unemployment rate of over 18%.

We have attached [1] to Appendix A, photocopies of the actual comments written on the survey forms by some of the Local 391 members. A quick reading of the comments will show the depth of feeling of these people and the alienation from government. These people who worked a lifetime in an industry believe that the Federal Government actions cost them their jobs and that the government doesn't care about them. In both beliefs they are unfortunately correct.

V. PROPOSAL FOR LABOR PROTECTIVE PROVISION—AMENDMENT TO MOTOR CARRIER ACT OF 1980

The International Brotherhood of Teamsters request that Congress correct its oversight in the Motor Carrier Act of 1980 and promptly enact legislation that will provide adequate labor protective provisions for those trucking industry workers who were and will be adversely impacted by the implementation of the Motor Carrier Act of 1980. Such adequate labor protective provisions should include at least the following:

(1) Preferential hiring of adversely impacted workers by new entrants and existing expanding carriers;

(2) Payment of moving expenses to adversely impacted workers who must move to obtain industry employment;

(3) Payment of health insurance premiums to workers and families who lost insurance coverage;

(4) Expanded income assistance provisions; and,

(5) Strict enforcement of laws barring age discrimination and discrimination against union membership by new entrants and other employers.

Such assistance should be available to eligible workers who could show that the Motor Carrier Act of 1980 was a major factor in their displacement or unemployment. The program should be administered by the U.S. Department of Labor.

We believe that the funding of such a labor protective program should be possible given the claims of benefits to society from the proponents of partial and total deregulation.

The preliminary results of the Local 391 survey in North Carolina are consistent with what our local union representatives have been reporting since the enactment of the Motor Carrier Act of 1980. We intend to do further surveys but we earnestly request that the Federal Government conduct an unbiased study of its own.

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[1] The attachment is in the Committee files.

VI. PROPOSALS TO DELETE FINANCIAL REPORTING REQUIREMENT—EXTREMELY MIGUIDED

The current I.C.C. proposed rulemaking to substantially curtail the collection of quarterly and annual reports of Class I and II regulated motor carrier of property; delete the Uniform System of Accounts; and the proposed Section 54 of the Trucking Deregulation Act of 1985 which "by implication removes such carriers from all reporting requirements" will guarantee that data will never be available to measure the impact of trucking deregulation legislation.

The proposals will also heighten the insurance crisis facing the industry and could cause insurance rates to increase even faster that the present high rates of increases. I.C.C. proposed rulemaking must be withdrawn.

VII. NO PROTECTION FOR OWNER-OPERATORS

The proposed Trucking Deregulation Act of 1985 if enacted, would remove even the limited protection offered to so-called owner-operators by the I.C.C. We believe that many owner-operators are forced to work at below cost rates and are living off of their depreciation. Instead of removing the limited degree of protection, Congress should enact legislation that would give owner-operators on lease to regulated motor carriers the right to organize and bargain collectively.

At a very minimum this Committee should insist that the Secretary of Agriculture and I.C.C. promulgate regulations under Section 1052.7 of the Motor Carrier Act of 1980—"written contracts pertaining to certain interstate movement by motor vehicle."

Owner-operators working in the exempt trucking industry need this protection included by Congress in the Motor Carrier Act of 1980 but ignored by the I.C.C. and Secretary of Agriculture.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. The Motor Carrier Act of 1980 required the Department of Labor to establish a job referral bank to assist trucking company employees in finding new employment. As you have testified to this Subcommittee nothing has happened to date with respect to this job bank. How much funding do you believe would be needed to establish this job bank in a meaningful fashion?

Answer. Section 35 of the Motor Carrier Act of 1980 requires the Secretary of Labor to, ". . . . publish a comprehensive list of jobs available with motor carriers of property holding certificates or permits issued by the Interstate Commerce Commission under subchapter II of chapter 109 of title 49, United States Code." Section 35 further states, "In addition to publishing the list, the Secretary shall assist a person previously employed by any such carrier in finding other employment."

The proposed Trucking Deregulation Act of 1985, if enacted, would eliminate the I.C.C. and there would not be any certificates or permits. Section 35 of the Motor Carrier Act of 1980 would be effectively nullified.

The IBT feels that the "job referral bank" called for in Section 35 of the Motor Carrier Act of 1980 might be of limited use to the laid-off employees. By limiting the job bank to certificated or permitted carriers the Congress has denied access to the job opportunities available for private carriers and other non-I.C.C. regulated carriers.

We have not done any analysis of the cost of establishing and operating the job bank mandated by Article 35 but feel that the cost should be minimal in this age of computers and rapid transfer of information. However, only a full labor protective provision (LPP's) system as outlined in the answer to question 2 below would adequately compensate the laid-off and terminated workers who were and will become adversely impacted by the Motor Carrier Act of 1980.

Question 2. In your testimony, you urge Congress to enact legislation that will provide adequate labor protection provisions for those trucking industry workers who were and will be adversely affected by the implementation of the Motor Carrier Act of 1980. What specific type of program do you envision?

Answer. The International Brotherhood of Teamsters recommends the following program of labor protection provisions (LPP's) be provided to assist workers who lose their jobs because of the enactment and implementation of the Motor Carrier Act of 1980. Assistance would be provided to all laid-off or terminated workers who could demonstrate that the Motor Carrier Act of 1980 was or will be *a* major factor in their displacement. The determination of worker eligibility would be a responsibility of the United States Department of Labor.

The LPP program should include:

(1) PREFERENTIAL HIRING

All existent carriers and new entrants, including regulated, exempt and private carriers, would be required to offer employment to qualified workers displaced by the Motor Carrier Act of 1980, or its implementation by the I.C.C., before they would be allowed to hire new employees.

Employers would first exhaust qualified persons on their seniority lists and follow all the recall and seniority provisions of applicable collective bargaining agreements before they would offer employment opportunities to displaced workers with experience in the Motor Carrier industry.

Workers adversely impacted by the Motor Carrier Act of 1980 would have to be qualified, or can reasonably expect to be qualified, in the occupations where vacancies exist. The Labor Department would also be required to enforce regulations against the use of independent contractors to evade or defeat the preferential hiring system. Employees would be specifically prohibited from not hiring otherwise qualified workers because of age and/or prior or current union membership.

In order to be effective the Congress must enact with preferential hiring a strict compliance clause with penalties for those employers that violate the law.

(2) MOVING EXPENSES

The U.S. Department of Labor should be authorized to grant reasonable moving expenses to those adversely impacted workers who must relocate to obtain employment in the motor carrier industry. Allowances should include provisions for families, house-hunting expenses, reimbursement for meals, aid in buying and selling residences, lease-breaking expenses. Travel expenses should also be available to those workers who must travel for job interviews.

(3) INCOME-MAINTENANCE PROVISIONS

Adversely impacted employees who are unemployed should be granted income maintenance benefits for a reasonable period of time. The amount and duration of benefits should at least equal the duration and amount of benefits granted airline employees by the Civil Aeronautics Board under the Alleghany-Mohawk and Delta-Northeast formulas.

The income maintenance program should be administered by the U.S. Department of Labor.

(4) HEALTH INSURANCE ASSISTANCE

Adversely impacted employees who lose their health insurance benefits should be given assistance to obtain insurance coverage through their union or former health and welfare plan for a reasonable period of time. Benefits would be for workers and dependents.

Senator **Packwood**. Let me make an announcement while the room is clearing out. I have got to leave about 1:30, and unless I can find somebody else to preside, we are not going to be able to get all of the witnesses on today. So while Mr. Donohue is testifying, I am going to ask those witnesses if any of them want to put their testimony and not testify, that is fine.

Otherwise, I may have to pick the people from out of town first who have come extraordinary distances and put them on, and attempt to take the Washington people later if I can't find anyone to preside and it gets to about 1:30.

Mr. Donohue, the president and CEO of the American Trucking Association.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

Mr. **Donohue**. Thank you, Mr. Chairman. We will put in the record our formal statement, a summary and the source of our numbers, all of which come from the ICC and the Department of Transportation.

Chairman Packwood, Chairman Danforth, members of the committee, I think there is something symbolic in the fact that we are considering legislation to deregulate the trucking industry on a day in which one of the most powerful hurricanes in this century is about to strike the east coast. The trucking industry exists today in the eye of its own storm, which will hit with full force if the administration's bill is advanced as written.

I also think it is appropriate that I begin my day speaking with you, Mr. Chairman, and end my day speaking to your constituents at their annual trucking convention in Oregon.

As we stated in our oversight testimony on September 9, ATA vigorously opposes any legislation that would further deregulate the trucking industry at this time.

Today, we reinforce that stance. ATA's opposition is not based on philosophical or ideological grounds. We oppose further deregulation for very pragmatic reasons based upon the difficult financial position of the industry and the potential negative impact on safety that additional deregulation would have.

Three weeks ago, we documented the negative financial condition of the trucking industry. I am not going to repeat that analysis today, but I would say that until we can do something about productivity access, taxes, insurance, and ERISA, there is no way that we can move forward on deregulation.

Let me say there are a number of things that would happen immediately if this bill were passed. First, it would stimulate a series of price wars that in the short run might be beneficial to some shippers, but would very badly hurt small shippers and small carriers.

Second, it would increase the ratemaking cost of individual companies that now share that cost. Third, it would shrink working capital. Fourth, it would accelerate concentration in the less than truckload part of our business. It would further expand overcapacity in the truckload segment of our business, much of that coming from foreign competitors.

It would also exacerbate the insurance crisis for reasons that I would be glad to discuss. It would aggravate our industry's tax burden because without full preemption the States would regulate interstate commerce. Historically, with additional regulation comes additional taxation.

It would force perhaps a renegotiation of the Master Freight Agreement. It would worsen the industry's multiemployer pension plans. It would expand nonreciprocal operations by foreign carriers in the United States, and it would eliminate the collection of essential motor carrier industry data.

We must also carefully consider the effect that deregulation will have on safety. The Secretary of Transportation is doing a superb job in spending much of her own time on this subject. However, the Department has continued to assert that there is no statistical correlation between trucking deregulation and safety.

However, analysis of recent motor carrier financial statistics and safety ratings may point to such a link. I am about to give you a number that is not in the written testimony and I apologize. I talked to the staff this morning, because we only got it from the Department of Transportation today. The Bureau of Motor Carrier

Safety reports that from 1983 to 1984 truck accidents increased 18 percent. That is the highest increase in truck accidents since 1967.

In addition, truck accident related deaths were up 8 percent, while the increase for all motor vehicle related deaths was only 3.9. percent. Further, truck accident related injuries increased 10.9 percent over the same 1983-84 period.

Safety in the trucking industry must not be compromised. We must move immediately to get unsafe trucks and drivers off the road, and our association is working vigorously with you and with DOT to achieve that objective.

We call upon the Congress and the administration to move forward to fully fund the Motor Carrier Safety Assistance Program, and I believe that is happening; to expand the provisions of the Federal Motor Carrier Safety Regulations to disqualify drivers who get three moving violations in a 12-month period of time; to clarify the provisions of the Federal Motor Carrier Safety Act to ensure that private carriers must also meet the same fitness requirements; to expedite implementation of the National Driver Register, and to do it in this century; to require a classified or commercial driver's license for truck drivers, and a road test in the type of vehicle to be operated, and to strictly enforce the 55-mile-an-hour speed limit.

We have stated ATA's commitment to safety before this committee and have backed up that commitment with an array of programs that you are well aware of.

The time is not right for further deregulation. By fact and by perception, further legislation deregulating the trucking industry would be a disservice to the carriers, the shippers, the economy, and the American people.

We urge this committee and the Congress to put aside trucking deregulation so they may address now the serious challenges that this industry faces. Only when we do something about State taxes, ERISA, insurance, productivity, and safety will the American people be in a position to consider additional regulatory changes.

Thank you very much, Mr. Chairman.

Senator PACKWOOD. Mr. Donohue, you say additional deregulation at this time will help neither the motor carrier industry nor the shipping community.

Why does every trade association that represents shippers, whether they are sending or receiving, and in less-than-truckload lots included, apparently mistakenly think that deregulation is helping them?

Mr. DONOHUE. I think there are a number of reasons, Senator. The first part of my answer is not intended to be flippant; it is very serious. You know, deregulation is much like tax reform. It is a very, very exciting thing until you find out what is in it. I think the shippers have to understand that they are in the middle of an economic cycle, that is, that they produce a product which has to be shipped to a consumer, and it has to be carried by a motor truck in most instances. We are going to find over time that it is sort of like that commercial I mentioned in the testimony, you pay me now or you pay me later. If we squeeze these carriers down to the point where there is no room for maintenance, no room for safety, no room for profit, no room to put in new equipment, over time we are going to have serious problems in our trucking industry.

You asked a question before which I thought was very much to the point. You said what was the purpose of regulation, and it really is safety, insurance, and security, and some method of protecting the level and the scope of service that these shippers and these consumers need. And ratesetting, as we have known it, with all of its shortcomings, is very, very important because it is efficient, the cost is shared, it avoids duplication of effort, and it is public.

I think the shippers who are represented before you today, when they start to look at the bill and its effect, and when they start to deal with the realities, will not be as excited as they are now. I do grant, however, that you will hear from a lot of them who would like us to deregulate because they think they can make a very important economic advantage. I submit it would be very short term.

Senator PACKWOOD. Well, it has been 4 years now, and they still seem satisfied. They are still here saying they like it.

Mr. DONOHUE. Well, I should think they would like it, sir, because we have a free enterprise economy now in the trucking industry, although we set rates collectively. Those rates are then taken to the shipper and can be negotiated, so long as the tariff is filed, to any level the shipper can get. The point that I have been trying to make is that if there is no significant gain in the ability to negotiate price, why put this trauma on top of an industry that is significantly burdened with the matters that we discussed just a moment ago? If the shippers say they have it now, then what are they going to gain by going further.

I think staying where we are for a period of time allows for better safety, an opportunity to improve our economics, and a little more public understanding of our business.

Senator PACKWOOD. In 1980, when we put the insurance rates in the statute with some discretion for the Secretary to lower them a bit, the ATA was a proponent of the higher rates as opposed to some others.

Is that still the ATA's position?

Mr. DONOHUE. Senator, we want the shipper, and the consumer, and the people on the highway to have the best insurance protection they can get. I think a number of issues have come to our attention, as well as yours. The tremendous number of new entrants that are eating up capacity, the question which we discussed last week of hazardous materials movement, and the most significant question of environmental restoration. I think we would like to see that matter addressed because we are not going to be able to get any reassurance on it. We are not going to be able to go out and meet those objectives.

So I would say we want an adequate level of insurance. We would like to have a review by this committee and others of the question of environmental restoration.

Senator PACKWOOD. But at the moment you are not sure what the ATA's position would be on higher insurance, lower—and I do not mean the rate, but the amount you have to carry.

Mr. DONOHUE. I understand that.

I would say that we would continue to support the high levels of coverage because of the tremendous increase in accidents. If we do not keep those, there are going to be all sorts of countervailing factors in terms of the cost of insurance, that we will not be able to buy it.

Senator PACKWOOD. Now, last week the American Automobile Association complained and showed some pictures about the 48-foot trucks using the older highways now, with the trucks turning and swinging way out into oncoming lanes.

What has been your experience or what facts do you have about the safety of the 48-foot trailers?

Mr. DONOHUE. Senator, if we went out and picked out five of the best State troopers in this country and asked them to drive down the road and tell the difference between a 45 and a 48, they could not do it.

There has been a very satisfactory safety record for 48-foot trucks. We do understand that both for 48's and for double bottoms, access areas off certain highways need to be looked at. But for the most part, the safety record has been very fine for both. We have been hurt by the study done by the Department of Transportation on double bottoms, which also looked at 48's. That concluded two things: No. 1, it would hurt the railroads, and No. 2, the summary of that study bore no resemblance to the study itself, and the Secretary is very upset about that right now.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. Mr. Donohue, when you said that further deregulation would expand nonreciprocal operations by foreign carriers in the United States, what did you mean?

Mr. DONOHUE. Well, Senator, right now we have a series of rules and regulations about Mexican and Canadian carriers coming into the United States. In the instance of the Mexicans, they are allowed to come into a commercial zone. In the instance of the Canadians, it is much more free flow, while U.S. carriers have none of the corresponding advantages of going into those countries.

If we carry out this bill, in our opinion, the way it is written, the Canadian-Mexican trucking border will be in Missouri, meaning that foreign carriers will go wherever they want, whenever they want, competing with our carriers. But our carriers will not be able to go into those countries. There would be no restrictions whatever.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator PACKWOOD. Senator Exon.

Senator EXON. Mr. Donohue, let me ask you to supply me, as I have other witnesses, with statements, if not included in your written testimony, to back up the statements that you make in your written testimony, and I quote again:

> During the first 3 months of 1985, 45 percent of the carriers of this industry operated at a loss, and profit margins are down, and bankruptcies in the trucking industry are at an all-time high.

I read those statements of yours to the Chairman of the ICC this morning, and he responded by saying something to the effect, yes, those are Teamster figures. I did not correct him. He had not seen the testimony. I did not want to badger him on it, but these were not Teamster figures. I was quoting from your testimony, as I suspect, or—I want the information to back that up again because I think that as we go forward, as to whether we should or should not do any further deregulation, and I tend to lean against it, I think this is a critical factor as to what the truth is. It is like this between what we are hearing from Government witnesses and what we are hearing from the private industry witnesses.

So I want more information on that because I think that basic factor is going to have a lot to do with what this one Senator's vote is with regard to whether we should further increase deregulation at this juncture.

Mr. **DONOHUE**. Thank you, Senator. We will be very happy to supply it.

I am glad you did not take the Commissioner too far out on a limb as most of those numbers came from his organization or from the Department of Transportation.

[The following information was subsequently received for the record:]

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Alexandria, VA, October 10, 1985.

Hon. J. JAMES EXON,
U.S. Senate, Washington, DC.

DEAR SENATOR EXON: As promised during the September 27 hearing on trucking deregulation legislation, I am enclosing additional information to document ATA's assertion that 45 percent of the carriers operated at a loss during the first three months of 1985.

Enclosed are the following:

(1) *Motor Carrier Quarterly Report, First Quarter 1985–1984.*

(2) A computer printout listing regulated motor carriers in order of decreasing first quarter 1985 operating ratio. Operating ratio is defined as total operating expenses divided by gross freight revenues. Of 931 carriers of this listing, 415 had operating ratios of 100.0 or higher, indicating an operating loss.

The information contained in these two documents is based on all first quarter reports submitted by motor carriers to the Interstate Commerce Commission. Obviously, there are far more regulated carriers than the 931 that reported first quarter data. But the ICC requires quarterly data only from Class I carriers and Class II intercity common carriers of general freight. Contract carriers, Class II specialized carriers, and all Class III carriers are not required to report quarterly data to the ICC.

Please do not hesitate to contact me or my staff with any additional questions you may have on the data and testimony we have submitted.

Sincerely,

THOMAS J. DONOHUE.

Senator **EXON**. They were not necessarily Teamster figures then?

Mr. **DONOHUE**. No, they are not. They are official U.S. Government statistics.

Senator **EXON**. Thank you. I have no further questions.

Senator **PACKWOOD**. Senator Ford.

Senator **FORD**. Thank you, Mr. Chairman.

Mr. Donohue, after your appearance before this committee, I believe it was approximately 3 weeks ago, I have thought a lot about your answer to one of my questions, and it has been sprinkled in the testimony up to now, and I asked you about this country's import problem and how it affected your industry, and I believe you stated at that time that trucks carrying imports would be once or twice, and carrying domestically made goods up to 15 times. I think that was your maximum.

Would you elaborate just a little on that and cite specifics as it relates to the industry for me?

Mr. **DONOHUE**. Yes, sir.

Let me try and elaborate first by giving you an example.

If we build a car totally in the United States, we move copper, steel, plastic, rubber, and other fabrics to plants where those things are put into some form, and then moved again to assembling plants, and then moved again to final manufacturing plants, and all of the components involved in that manufacturing for the most part are carried in trucks.

We then take the finished product and move it to its point of distribution, and finally to the sales office. If we pick it up at the dock, we move it once. Now, that is not to say that our association favors some major change legislatively in the trade rules. We have had a lot of pressure on that, and we have communicated with the Senators, all of you, and with the White House, saying that we ought to enforce the present law. There are some encouraging signs on the horizon. The fact that many of the offshore manufacturers are beginning to come to the United States to manufacture cars will help a little, but we have talked to people from all sorts of industries that find that because of the price of labor and other factors, that it is more advantageous for them to move offshore. When they do so, it is very simple to understand. We do not carry it as much.

That is a direct answer to your question. I hope it is not a question about how we stand on another bill. It is just a factor that right now in 1985 we are carrying less freight than we were in 1978, and we have more capacity, and that gives you a pretty good idea of what is one of the problems with this industry.

Senator FORD. I think, Mr. Chairman, this factors into our deficit and balance of trade as it affects here, and the fear of going too far as it relates to protectionist and trying to find some kind of a balance. But the effect is here, it is evident. I think Mr. Donohue has explained it very well, and I am glad that it is in the record.

Mr. Donohue, many witnesses today will urge Federal preemption of State trucking regulations, and the State of Texas is raised as the, I think, best example, if I can use that.

Would ATA or are you saying in your opposition to this legislation support preemption of State trucking regulations?

Mr. DONOHUE. Senator, this has to be approached from two different points. No. 1, I raise the issue because if this bill were passed without a very vigorous piece of legislation from this Congress that prohibited States from regulating interstate trucking, they would do it, and when they do it, they would also tax it. With the exception for those matters that relate to some discriminatory taxes and some productivity issues covered by Interstate Commerce rules, we would not encourage this committee to preempt intrastate trucking regulation.

I have had conversations with many in both the DOT, and the Senate, and the House, and others about our serious productivity problems. Under STAA we agreed to pay a lot more taxes in return for productivity advantages which we now do not get in New York, and California, and Indiana, and other places. It is in those areas that we need help from this committee. In terms of going in and interfering in intrastate regulation, we would not encourage that so long as we could protect ourselves from discriminatory taxation, get the advantages of the STAA, and not be burdened by States regulating interstate commerce.

Senator **Ford**. Commissioner Strenio stated previously that the trucking industry must not be in terrible shape since the ICC keeps processing entry applications. My figures may not be right that—I think I got them from you. You stated that there are 12,436 new carriers that have entered the industry, and since 1980, the present law.

Mr. **Donohue**. Yes, sir.

Senator **Ford**. Why do you think the companies keep entering the industry when almost 1,500 bankruptcies in the industry were filed last year?

Mr. **Donohue**. Senator, two points. No. 1, although the ICC can tell us how many folks have entered the industry, they have no idea of how many have left. As a matter of fact, major companies that we know have been bankrupt for 1 year, 2 years, 3 years are still carried on their numbers.

But I think to give you a direct answer why people enter is because this is the land of great entrepeneurs, people with great vision who do not feel that what has happened to the other fellows is going to happen to them. Trucking has always been a place where a man with a dream and a truck could make a living.

But it is getting harder to do with insurance rates, productivity problems, tax issues. Our taxes have gone up 70 percent in the last 5 years. But that dream is still there.

Senator **Ford**. Well, my time is up, Mr. Chairman, but the bankruptcies, the increase in taxes, the increase in accidents, and all of this I think is beginning to mount as it relates to opposition to further deregulation, in my mind. I wish I could stay here to listen to all of the testimony today, but I do have it, and Mr. Donohue, I want to say to you that you are very articulate and represent your association well.

Mr. **Donohue**. Thank you very much, Senator.

Senator **Packwood**. Let me make sure I understand your conclusion, Mr. Donohue.

If we continue on with deregulation, there are going to be more bankruptcies, a less firm trucking industry, more of a consolidation, I assume eventually, and finally, almost a monopolistic situation which will then really squeeze the shippers.

Mr. **Donohue**. In the less-than-truckload segment of the industry, I think there would be significant consolidation. Many of the smaller companies in that part of the business would have a difficult time because of massive increases in the cost to set their own rates, increases in their insurance costs, and uncertainty as to how to define the costs to insure what they are carrying.

There is a question in the bill about whether there would be any cargo insurance at all. I think the small- and medium-sized carriers would be in real trouble. Two types of carriers would prosper: The very big guys and the very small companies with one or two trucks.

Senator **Packwood**. Well there are going to be trucks that will carry less-than-truckload lots if there is business.

Mr. **Donohue**. Sir, there will always be trucks to carry whatever it is to carry. That is one thing about this country. The question is how efficiently, how secure and how safely can they do it.

Senator **Packwood**. I understand that, but I want to know if what you are contending in the less-than-truckload, smaller shipments, where the shippers are euphoric right now with the opportunities and alternatives they have, that that is going to disappear and either very large companies are going to dominate less-than-truckload shipments or you are going to have a few independent drivers with small trucks attempting to do it, but the shippers are not going to have the luxury that they have right now.

Mr. **Donohue**. Sir, that is my exact conclusion. If you pull the trigger on this today, in 3 years seven companies will run this business.

Senator **Packwood**. Senator Danforth.

The **Chairman**. No questions.

Senator **Packwood**. Mr. Donohue, thank you very much.

Mr. **Donohue**. Thank you, Mr. Chairman. I will give your constituents your regards this evening.

Senator **Packwood**. Thank you.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN TRUCKING ASSOCIATIONS

I. INTRODUCTION

I am Thomas J. Donohue, President and Chief Executive Officer of the American Trucking Associations, Inc. I submit this statement on behalf of ATA.

ATA is the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

As stated in our oversight testimony three weeks ago, ATA vigorously opposes any legislation that would further deregulate the trucking industry at this time. ATA's opposition is not based on philosophical or ideological grounds. We oppose further deregulation for pragmatic reasons based on the difficult financial position of our industry and the potential negative impact on safety that additional deregulation would have.

Let me briefly summarize the facts I presented three weeks ago concerning the trucking industry's financial condition:

During the first three months of 1985, 45 percent of the carriers in this industry operated at a loss. Rapidly increasing costs attributable to insurance, taxes, and labor, combined with slow revenue growth, have placed about half the industry in a negative financial position.

Profit margins are down. Net income for the motor carrier industry has been below three percent every year since 1978. Three percent is a traditional yardstick of a sound income level in the trucking industry.

Bankruptcies in the trucking industry are at an all-time high. Motor carrier failures totalled only 162 in 1978, compared with 1,409 failures in 1984.

The withdrawal liability provisions of ERISA are forcing 200–300 companies to stay in business against their will. These companies cannot go out of business without paying a withdrawal penalty which can be several times the net worth of the company.

Trucking industry taxes have skyrocketed. From fiscal 1982, the last year before passage of the Surface Transportation Assistance Act, to fiscal 1985, federal highway taxes for a typical tractor-semitrailer combination rose from $1,746 to over $4,200, an increase of more than 140 percent. Trucking continues to be the highest taxed industry in America with an effective federal income tax rate of 38.2 percent. That is twice the average rate for all industries and 16 times the rate paid by the lowest taxed industry, railroads.

Insurance costs have increased 200 to 600 percent, posing a crisis for the trucking industry and the American economy.

In summary, the financial condition of the trucking industry overall is weaker today than it was five years ago.

In addition, since 1978 average freight rates have increased faster than the Consumer Price Index, which means shippers pay more for truck transportation today than they did before the Motor Carrier Act of 1980; the productivity gains promised by the Surface Transportation Assistance Act of 1982 have not been fully realized;

and the introduction of 12,000 additional carriers since 1980, combined with reduced profit margins, raises serious questions about safety.

We believe that additional deregulation at this time will help neither the motor carrier industry nor the shipping community and holds the potential for deterioration in service and safety.

Notwithstanding the repeated assertion that regulation was not intended to assure a reasonable profit margin for motor carriers, the strength of the U.S. economy relies heavily on a healthy and productive trucking industry. Throwing the baby out with the bath water in defense of an ideological stance in favor of deregulation is of little benefit to the overall economy and may in fact inhibit this nation's economic recovery.

The United States spends roughly $275 billion each year to move all its freight. Fully three-quarters of that total, or $208 billion, pays for freight movement by the trucking industry. Trucks haul more than two billion tons of freight each year in travel between U.S. cities. Specifically, trucks carry:

85 percent of all furniture, fixtures, and appliances for the home;

80 percent of all food, rubber products, and plastic goods produced in the U.S.; and

70 percent of all U.S. lumber and wood products, and an equal amount of such primary metal products as steel, sheet metal, cable, wire, pipes, rods, and other semi-finished goods.

Trucks serve every community in the United States. Two-thirds of all communities are serviced exclusively by trucks and by no other means of freight transportation. The trucking industry directly affects every homemaker and shopper; teachers and students; plumbers, electricians, and bus drivers; dentists, doctors, and nurses; farmers, ranchers, and miners; blue- and white-collar workers of every skill and trade.

It is clear from this brief profile that a healthy trucking industry is essential to the American way of life. A weak and unhealthy trucking industry is bad for all of us. The Government of the United States can no longer ignore the financial health and essentiality of the trucking industry.

While this Committee has heard testimony from several shipper groups supporting additional deregulation, not one witness has expressed a desire to have a weak motor carrier industry. Additional deregulation at this time will weaken the industry upon which we all depend. It also threatens safety on our highways, the U.S. economy, and our national security.

The most recent legislative proposal from the U.S. Department of Transportation, sent to the Congress on September 12, will remove the Federal government from a meaningful role in the regulation of the trucking industry. DOT's suggested legislation is not in keeping with the purposes of the Department of Transportation Act to:

(1) improve transportation safety;
(2) protect and improve the environment; and
(3) protect consumer interests.

The American Trucking Associations cannot and will not support any legislation that will violate those goals, compromise safety, or damage the health of the trucking industry.

II. THE IMPACT OF FURTHER DEREGULATION

No one has a crystal ball to help predict the future. Had there been one, it might have been wise to delay passage of the 1980 Motor Carrier Act until after the 1982 recession. The recession was a major blow to the motor carrier industry. Other unanticipated developments that have occurred since 1980 are documented in the previous section. These problems are real and should be resolved before Congress enacts further economic deregulation of the trucking industry.

We attempt in this section to project the effects of further economic deregulation as proposed by the Department of Transportation. We believe that elimination of antitrust immunity for collective ratemaking and all powers of the Interstate Commerce Commission (ICC) to establish reasonable parameters on motor carrier rates and services would have the following effects:

(1) Stimulate massive price wars;
(2) Increase ratemaking costs;
(3) Shrink working capital;
(4) Accelerate concentration in the less-than-truckload (LTL) general freight segment of the industry;
(5) Expand overcapacity in the truckload segment of the industry;
(6) Exacerbate the insurance crisis;

(7) Aggravate the tax burden;
(8) Force a renegotiation of the National Master Freight Agreement;
(9) Worsen the industry's multiemployer pension plan problem;
(10) Expanded non-reciprocal operations by foreign carriers in the U.S.; and
(11) Eliminate the collection of essential motor carrier industry data.

Following are brief descriptions of each impact

(1) *Stimulate massive price wars*

Over the past five years, the trucking industry has experienced greater competitive pricing activity than ever before. The Motor Carrier Act of 1980 was designed to accomplish that purpose, particularly with provisions establishing and expanding zone of pricing flexibility free from the statutorily-imposed rate regulation by the ICC.

Motor carriers have not found it necessary to utilize the free zone since the ICC's change in attitude toward its rate responsibilities. Motor carriers have filed vigorously competitive rates and, daily, thousands of discounts are made independently from collectively-filed rates without ICC intervention. Many would maintain that price wars presently exist throughout the industry.

The Department of Transportation deregulation bill would eliminate (1) the collective ratemaking process, (2) all tariff filing requirements, and (3) controls on unreasonable, discriminatory or predatory pricing other than after-the-fact enforcement through the Department of Justice under the antitrust laws. Under these new conditions, the motor carrier industry would experience, for a short time at least, instability in the marketplace and the possibility of shortcuts in safety and maintenance.

(2) Increase ratemaking costs

In testimony before this Committee on September 9th on oversight of the Motor Carrier Act of 1980, ATA presented a full discussion of the increased cost of doing business. These include rising overhead costs as carriers added managerial staff, increased their sales and marketing efforts, refined communications systems, adjusted tariffs, and otherwise positioned themselves for heightened competition. We pointed out that such expenditures have nearly doubled since 1978.

Elimination of rate bureaus would deprive carriers of the sopohisticated techniques now used to determine costs and establish rates. Each carrier would have to "go it alone." Ratemaking costs would rise as each carrier would be forced to duplicate costs now borne collectively.

While each motor carrier is responsible to know its own costs, the creation of an individual tariff structure requires sophisticated in-house techniques not available to many smaller and medium-size companies. Thus, independent ratemaking will favor larger and specialized companies who have already made these investments.

A related question is whether motor freight classification can survive without antitrust immunity. Although classification is not a rate-setting activity, some have argued that it forms the foundation for rate-setting and therefore should be subject to antitrust laws. Anything less than a specific provision granting antitrust immunity would require a daring decision by individual carriers to join together to establish a freight classification. Withoug a general freight classification, individual tariffs would cost more because carriers would have to develop and publish their own classification.

Individual tariffs are filed most often in reaction to and in relation to bureau tariffs. To the extent there has been a rational, interconnected system—and indeed there is much less of a system today than there was five years ago—that system will be undone. Brokers and other transportation intermediaries, relatively unnecessary prior to 1980, will be required more and more for the unsophisticated shipper. The entire ratemaking process will increase in cost.

(3) Shrink working capital

Last January, the ICC liberalized the rules by which motor carriers can extend credit to shippers. Our oversight testimony discussed new rules. Most motor carriers observe a credit period of about 15 calendar days, despite the options provided by the Commission. The reason carriers stay with the 15-day credit period is the fact that the working capital provided by the 15-day is essential to a carrier's cash flow.

Competitive pressures and elimination of the credit rules for motor carriers will quickly force carriers to offer 30- or 45-day credit. This will have an immediate adverse impact on cash flow, further weaken the carrier's financial position, and create another competitive dichotomy between cash-rich and cash-poor carriers whereby the rich get richer. Where small carriers get the revenue needed to invest in new costing and collection procedures, market information, and to make cargo liability determinations necessary to survive in a deregulated environment?

(4) Accelerate concentration in the less-than-truckload [LTL] general freight segment of the industry

Economies of scale do exist in the general freight LTL segment of the trucking industry. From 1978, the beginning of economic deregulation, to 1984, the revenue share of the top 20 more carriers in this segment rose from 43 to 67 percent. The top four carrier's share grew from 20 to 35 percent over the same period.

Further deregulation will greatly accelerate the concentration trend. Open entry enabled the largest carriers to obtain nationwide operating authority to round out their operations. This has already resulted in many smaller, regional carriers going bankrupt, merging, or selling their businesses. Open entry has not resulted in new general freight LTL carriers entering the business. Only one new nationwide general freight LTL carrier has entered since 1980 and that carrier has since closed the LTL portion of its operations.

While some degree of concentration is expected in an industry that has economies of scale, in this instance, concentration will be achieved at the expense of family-owned and regional carriers.

(5) Expand overcapacity in the truckload segment of the industry

Without further deregulation, the number of competitors in the truckload segment would continue to grow. ICC-authorized carriers numbered 30,481 at the end of 1984, almost 3,000 more than in 1983 and 12,436 more than in 1980. This represents a 69 percent increase in the number of carriers since passage of the Motor Carrier Act.

We see no justification for further deregulation when it will increase competition in the truckload segment which already suffers from serious overcapacity.

(6) Exacerbate the insurance crisis

Insurance costs for the trucking industry have risen dramatically in the past nine months. Some motor carriers have had premium increase of 500 percent or more. Others have had difficulty getting insurance coverage at the limits mandated by law. Underwriting losses have forced insurance companies to increase premiums and to be more selective in their coverage. While some motor carriers with a good safety record can get insurance, albeit at a high rate, others are finding it difficult to get coverage at all. Carriers with poor safety records cannot find insurance at any cost.

If carriers cannot find insurance, they have two options; cease operation until they can find insurance or operate illegally. Unfortunately, some appear to be utilizing the second option. ICC Chairman Reese Taylor has reported that 3,393 carriers have had their operating authority revoked in an 11 month period (October 1984 to August 1985) because of failure to have insurance or evidence of other financial responsibility. He also reported 482 consent agreements whereby motor carriers agree not to engage in interstate commerce until they have adequate insurance and 28 civil injunctions which prohibit motor carriers from operating in interstate commerce until they have adequate insurance. These actions notwithstanding, the Department of Transportation reports that 25 percent of all carriers—regulated and Unregulated—do not have adequate insurance coverage.

If the combined resources of the ICC and DOT are insufficient to enforce current insurance requirements on a known universe, what will happen when the industry is completely deregulated? We predict that in the face of such uncertainty the insurance industry will have no choice but to further increase premiums. This uncertainty is based on the following factors:

Open entry will require expanded capacity in the insurance industry. Such capacity is not available and is not expected to become available in the forseeable future. Insurance companies will have to raise rates for existing carriers and new entrants in order to expand capacity.

Elimination of mandatory financial and operating statistical reporting will deprive insurance companies of ready access to a data base which accurately reflects the financial condition of the trucking industry. Insurance companies are likely to raise rates if they are forced to develop their own data files upon which to base premiums.

Without adequate enforcement to get the bad safety risks off the highways, insurance companies will raise rates on all carriers to compensate for the anticipated losses.

(7) Aggravate the tax burden

Currently the trucking industry is afforded limited protection from discriminatory state taxation. Unlike the other modes, the only protection motor carriers have is from discriminatory state property taxes. The DOT proposes to take away even this small protection, calling it "primarily a rail issue." Given the propensity of the states to discriminate against motor carriers in other tax matters, one can only wonder how long the trucking industry will be safe from property tax discrimination.

Furthermore, many states have interstate equipment sales and use tax exemptions predicated on the holding of ICC authority. Elimination of regulation on the federal level will throw the status of these state tax exemptions into complete confusion and could result in drastically increased tax liability at the state level for carriers currently regulated by the ICC.

Although the DOT's bill preempts future state activity in economic regulation, it does not preempt the states from picking up and expanding those non-economic activities of the Commission such as insurance and safety. The inevitable proliferation of fees, decals, and stickers for safety and insurance will add to the already overwhelming tax burden of the carriers.

Finally, states will be allowed to continue to regulate intrastate trucking under the DOT proposal (pending the outcome of a study). Twenty-four states accept the current ICC data reporting requirements in place of their own forms. Elimination of the ICC reporting requirements will force the carriers to adopt the differing state reporting forms in those states where the carrier has intrastate operations. Such non-uniformity increases compliance costs which are really hidden taxes.

(8) Force a renegotiation of the national master freight agreement

Implementing legislation to completely deregulate the trucking industry at this time could disrupt labor relations. The National Master Freight Agreement recently signed by representatives of the International Brotherhood of Teamsters and major motor carriers allows the union to reopen the contract if major legislative action changes industry conditions. Such action may lead to unnecessary interruptions in service and increased costs to carriers, shippers and consumers.

(9) Worsen the industry's multiemployer pension plan problem

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), passed shortly after the Motor Carrier Act, requires an employer who withdraws from a union-sponsored, multiemployer pension plan for any reason to pay a withdrawal penalty to the plan. A significant number of carriers who wish to go out of business, including many marginal companies, are simply hanging on to avoid huge withdrawal liability assessments which can exceed the company's net worth.

As indicated in earlier sections of this testimony, complete trucking deregulation at this time will likely increase the cost of all facets of motor carrier operations. This result of deregulation will further depress profit margins of marginal carriers and force more and more of them into the pool of companies that are simply hanging on to avoid huge withdrawal liability penalties.

(10) Expand non-reciprocal operations by foreign carriers in the United States

The Motor Carrier Act of 1980 opened entry in U.S. markets not only for U.S. motor carriers but also for Canadian and Mexican domiciled carriers. Meanwhile, U.S. carriers continue to face strick entry standards to the north, including Canada's fiercely nationalistic Foreign Investment Review Act, before they may engage in business in that country. With respect to Mexico, that country's constitution prohibits U.S. carriers from operating on Mexican highways.

Current U.S. law has placed a moratorium on the licensing of Mexican carriers by the ICC and has restricted the operations of all Mexican carriers, both for-hire and private, to the commercial zones of municipalities contiguous to the United States-Mexico border. The only limitation on Canadian carriers is the requirement for an ICC license. Thus, existing U.S. law grants carriers from our two neighboring countries a virtual monopoly on the growing transborder transportation market.

The Department of Transportation bill would only exacerbate this already inequitable situation for U.S. carriers. Canadian carriers will be free to operate in the United States without restriction. While Mexican carriers will be required to register with DOT, once they carry out this formality, they too will be free to operate anywhere in the United States. Thus, the proposed law will remove all restrictions on Canadian and Mexican carriers and put U.S. carriers at an even greater competitive disadvantage with respect to their foreign competitors. U.S. carriers will gain nothing in exchange.

(11) Eliminate the collection of essential motor carrier industry data

The proposed legislation would eliminate the motor carrier uniform system of accounts and the collection of industry statistics. The government, industry, and public would be without data to evaluate the performance, condition, and needs of this vital industry because of the disproportionate number of privately held companies.

Numerous federal offices, including the Departments of Transportation and Commerce, the Office of Management and Budget, and the General Accounting Office currently use this motor carrier data. As proposed, the reduction in data would not enable these agencies, Congress, or anyone else to indentify trends in operations or expenses (e.g. insurance, fuel, labor costs) which may require administrative or legislative response. Further, elimination of the Uniform System of Accounts, a system designed by the industry to be compatible with the industry's needs, would render meaningless any data that may be obtained from private sources because of its lack of uniformity.

Financial institutions, insurance companies, other carriers and shippers also use these motor carrier statistics. If federal agencies and individual users had to develop their own data sources, the costs would be much greater than the cost of continuing the existing rules and procedures. Further, there is no cost to the government or the industry of retaining the uniform system of accounts which gives a common base to whatever statistics the agency collects.

Twenty-four states that require carriers to file reports have adopted the ICC's report form and uniform system of accounts. Thus, carriers need complete only one form and distribute copies to the appropriate states. Elimination of the ICC report and accounting system will likely result in a proliferation of individual state reports and systems, and cost increases to the carriers and the public.

Those who disagree with our position against further deregulation will argue with some of these projections. They will find it difficult, however, to refute the overall adverse economic effect of these changes.

III. SAFETY

Safety is a big question mark. The introduction of 12,000 new carriers over a period of four years and low profit margins for the industry as a whole raise concerns that adequate safety and maintenance programs are not being carried out. If total elimination of economic regulation will add to the industry's instability and financial distress at this time, it should not be pursued. Survival economics is bad for safety.

ICC Chairman Reese Taylor recently testified on motor carrier safety. He explained present Commission safety fitness procedures and proposed increasing ICC efforts to prevent unsafe motor carriers from operating on the public highways. Compliance with safety regulations can be enhanced if the law requires carriers to possess an operating certificate that can be denied, revoked, or suspended.

A cursory review of the seven major truck accidents on Washington's Capital Beltway over the last two years reveals that six of the seven accidents involved non-ICC-authorized carriers. The only one which involved a regulated carrier was caused by an automobile driver who was charged in the accident. While this is not a satisfactory valid sample, it does raise serious questions about the fitness of unregulated carriers and the ability of the Department of Transportation to deal with them effectively.

Additional questions have been raised about the relationship between deregulation and safety. As indicated in Section II, in a deregulated environment motor carriers will be forced to operate on smaller profit margins. According to a study prepared for the AAA Foundation for Traffic Safety, these smaller profit margins will have a deleterious effect on safety. Specifically, the study states that changes resulting from deregulation "are threatening the safe operation of motor carrier equipment on the highways and endangering the lives of motorists and truckers alike."

Of greater evidentiary value is the finding that of all Class III motor carriers (revenues below $1 million annually) with an unsatisfactory safety rating assigned by DOT, almost 70 percent received their initial authority since 1978 when entry was liberalized. Yet these new entrants account for only 50 percent of all Class III carriers. One can only conclude that a higher proportion of new carriers will have unsatisfactory safety ratings.

Furthermore, the 1984 operating ratio of Class I and II carriers (revenues over $1 million annually) with unsatisfactory safety ratings was 97.12—a full percentage point worse than all Class I and II carriers, reflecting operating profits 25 percent below the industry average. This finding clearly establishes a relationship between the smaller profit margins associated with deregulation and unsafe motor carrier operations. In other words, carriers with low profit margins are statistically more likely to receive unsatisfactory safety ratings from the Department of Transportation.

Repeated assertions by the Department of Transportation that there is no "statistical correlation" between trucking deregulation and safety provide little comfort to the nation's motorists.

Economic regulation of the trucking industry is not the only means to ensure safe operations. Strict enforcement by the Department of Transportation of existing safety laws and strong industry self-regulation programs are the primary methods to accomplish this goal.

With respect to government action, ATA urges the Congress and DOT to:

Fully fund the Motor Carrier Safety Assistance Program to conduct more roadside safety inspections and to get the small number of bad trucks and drivers off the road;

Expand the provisions of the Federal Motor Carrier Safety Regulations to disqualify drivers of commercial motor vehicles for accumulating 3 moving violation convictions in a 12 month period;

Clarify provisions within the Federal Motor Carrier Safety Act to ensure that private carriers meet the same fitness requirement applicable to motor common carriers of property;

Expedite implementation of the National Driver Register to facilitate easy and efficient checking of truck drivers' official traffic records;

Require a classified or commercial driver's license for truck drivers and a road test in the type of truck to be operated; and

Strictly enforce the 55 mph national speed limit.

In addition to these necessary government actions, ATA vigorously supports the following industry sponsored safety programs:

ATA has established a driver training program that is now available to every fleet in the country. This program includes a film, a six-part slide presentation, a carefully designed driver workbook, and instructor's guide.

ATA supports the Commercial Vehicle Safety Alliance which seeks nationwide uniformity of inspection procedures.

ATA has entered into an agreement with DAC Services to provide motor carriers with driver record information in an efficient and timely manner.

ATA is developing a verifiable driver analysis program that will enable the industry to detect driver attitude problems before these problems impede performance and safety.

ATA has established a new safety service, entitled "The Safety Focus," to provide carriers with more safety program information.

ATA has established an improved set of training seminars for safety officials in the trucking industry.

ATA will select at least six professional truck drivers to serve as official industry spokesmen to the public, media, and government officials. These spokesmen will lead an effort to reinforce the professionalism and positive self-image of the American truck driver.

These programs represent a total commitment by ATA and the trucking industry to support highway safety. Safety must not be compromised. We should move immediately to get unsafe trucks and drivers off the the road. Safety is good business, good citizensip, and good politics.

Uness the Department of Transportation can guarantee the motoring public that deregulation will have a positive, immediate impact on safety, Congress should think carefully before pursuing further deregulation.

IV. CONCLUSION

The Department of Transportation's deregulation bill demonstrates that agency's insensitivity to the needs of the trucking industry. It is a reflection of the inequitable organization of the that Department which lacks a Motor Carrier Administration.

This bill would create a situation in the industry that may be compared to a popular television commercial for oil filters in which the mechanic looks into the camera and says, "You can pay me now, or you can pay me later." If DOT has its way, we will all have to pay a lot, now and later. Such a radical change in the regulatory climate of the industry at this time will result in:

Increased motor carrier costs;

Altering the structure of the industry;

Destabilization of current labor arrangements; and

Aggravation of safety problems.

The only redeeming feature of this bill is the provision calling for centralization of all motor carrier safety functions within DOT. But this provision alone cannot overcome the deleterious effects that other provisions of the bill will have on safety. Nor does it address the other serious challenges affecting the trucking industry and our economy.

Further deregulation should not even be contemplated until the Administration and Congress:

> Adequately enforce existing safety laws and regulations and fund essential safety programs at statutory levels;
>
> Enforce the intent of STAA by removing all unnecessary state limitations on productivity;
>
> Involve themselves in a resolution of the ERISA situation that threatens the financial stability or motor carriers and the security of employees who participate in multiemployer pension plans;
>
> Recognize the aggregate effect of rising taxes at all levels of government which place a disproportionately high tax burden on the trucking industry and make it the highest taxed industry in America;
>
> Provide leadership in addressing the geometric increase in insurance rates which threatens the trucking industry and the entire U.S. economy;
>
> Understand the essentiality of the motor carrier industry, correct the gross inequity that limits the effectiveness of the Federal government in addressing issues that concern the nation's most significant transportation mode, and support legislation to create a Motor Carrier Administration within DOT.

It is clear to us that the time is not ripe for further deregulation. By fact and by perception, further legislation deregulating the trucking industry would be a disservice to the carriers, the shippers, the economy, and the American people. We urge this Committee and the Congress to act, not to completely deregulate the trucking industry, but to address the serious challenges this industry now faces. Only then will the industry, shippers, and the American people be in a position to consider additional regulatory changes.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. At the Subcommittee's September 20 hearing, the American Automobile Association (AAA) expressed its concern about the use of 48-foot trailers off the nationwide truck route network designated by the Secretary. The AAA noted that when a 48-foot trailer is operated on highways of older design, the trailer will move out of its lane on curves and at intersections, creating potential safety problems.

a. Does the ATA have any specific evidence on the safety performance to date of the 48-foot trailers?

b. If Congress were to authorize broader access for these vehicles, do you believe there would be any safety problem?

Answer. ATA has no specific evidence on the safety performance of 48-foot semitrailers.

While not permitted overywhere before the Surface Transportation Assistance Act, such equipment was legal in at least 27 states. Since no safety issue was raised during debate over the act and because we find nothing in the safety literature now that differentiates 48-foot semitrailers, we believe they are without unique safety problems.

Based upon piror experience with 45-foot semitrailers, we do not believe there will be any new safety problems created by allowing broad access for 48-foot equipment.

Prior to the Surface Transportation Assistance Act, 45-foot semitrailers were common. In assessing whether there would be a safety problem related to the general use of 48-foot equipment, it is necessry to compare it to 45-foot vehicles. The basic difference between 45- and 48-foot semitrailers is three feet in length. The construction methods and components used for both vehicles are the same; therefore, such things as their braking, lighting and maintenance are similar.

There will be a difference in maneuvering as offtrack increases with trailer wheelbase. The following Society of Automotive Engineers equation enables a comparison between offtarck of 45- and 48-foot semitrailers:

$$\text{Maximum Offtract} = w^2 + {}^2 (t^2 - w^2 - h)^2 - k^2 + (t^2 - w^2 - h)^2 - S^2$$

Maximum Offtract occurs on a 270° turn
where:
w = tractor wheelbase = 11.5-ft.

t = tractor turning radius = 100-ft., 200-ft.
h = ½ front wheel tract = 3.2-ft.
k = Kingpin offset = .7-ft.
S = semitrailer wheelbase = 38-ft. for 45-ft. semitrailer; 41-ft. for 48-ft. semitrailer.

Solving the equation for both semitrailer wheelbases and subtracting the results leaves a difference in maximum oftrack of 16½ inches for a 100 foot radius, 270° turn and 7½ inches for a 200 foot radius, 270° turn.

The turns just described are equivalent to going from North to West on a cloverleaf. Except for very old designs, most cloverleaf interchanges have greater than a 200 foot radius so both examples are definitely worst case conditions. Beyond that, all lesser turns such as 90° (North to East) and 180° (North to South) will generate less offtrack so, again, the example is worst case. Finally, it was assumed in selecting the semitrailer wheelbases that a longer trailer would result in a similarly longer wheelbase. Since semitrailer wheelbase is dependent upon upper coupler and axle placement, not overall length, many 45 and 48 foot semitrailers have the same wheelbase. Offtrack for trailers with the same wheelbase is the same, regardless of overall length.

Question. It was suggested at the Sepetember 20 hearing by the insurance industry that the minimum financial responsibility requirements of the Motor Carrier Act of 1980 should be amended so that the Department of Transportation can revise the reqirements, should it prove necessary.

a. Do you believe the Department should have the authority to lower the insurance standards for motor carriers?

b. If the Department were to lower the insurance standards, do you believe the public would be adequately protected?

c. What minimum level would be needed?

Answer. As I stated in my testimony, ATA does not believe the Department should lower the limits. The current insurance crisis would not disappear or be solved if the limits were lowered.

We believe the public would not be adequately protected if the limits were lowered.

Motor carriers should carry the minimums of $750,000; $1,000,000 and $5,000,000, contained in Section 30 of the Motor Carrier Act. In fact, most companies carry greater insurance, if they can acquire it.

Question. At the Subcommittee's September 20 hearing, representatives of the insurance industry suggested that the "environmental restoration" requirement of the Motor Carrier Act of 1980's insurance provision be modified to more clearly specify a motor carrier's (and that carrier's insurance company's) liability when hazardous materials spills occur. To what extent would such a modification alleviate the insurance crisis being faced by the trucking industry?

Answer. Unlike the situation with general liability where the coverage is generally available, albeit at a substantially higher rate, environmental restoration insurance will be almost unattainable at any price after January 1, 1986, as renewal dates approach or policies are cancelled mid-term. We are told by the insurance industry that they do not know what "environmental restoration" means. Because they perceive an unlimited risk for which they cannot determine an adequate premium, they refuse to provide the coverage.

We would hope that if there were some certainty about "environmental restoration," coverage would be available even if at a very high price.

Question. The Motor Carrier Act of 1980 had a number of goals. These included promoting competitive and efficient transportation services in order to: meet the needs of shippers, receivers, and consumers; allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; allow the most productive use of equipment and energy resources; enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; provide and maintain service to small communities and small shippers; improve and maintain a sound, safe, and competitive privately-owned motor carrier system; promote greater participation by minorities; and promote intermodal transportation. Do you think *any* of these goals have been successfully met?

Answer. A number of goals of the Motor Carrier Act have been met, others have not, and for some, assessing success or failure is premature.

The goal of increased competition has undeniably been met as carriers continue to enter the business or expand. There is at least double the number of competitors now. Also, price/service options abound, dictated mainly by the shipper.

With virtually no restrictions on entry, surely all minorities who wanted to enter the trucking business have obtained authority. Likewise, trucking companies with intermodal orientations have had every opportunity to pursue this line of business.

While few measures exist on the level of service to small communities and shippers, service appears to be adequate. While some carriers have terminated service to small shippers and communities, the lack of complaints indicates that other carriers are providing that service. There is no assurance that this situation will not change.

Two questions, however, may be asked: 1) what are service and rate levels relative to larger, better situated competing shippers, and 2) are small shipper product sales suffering as a result? Some testimony indicated this was a problem. As carriers continue to differentiate service, discrepancies in such areas could escalate.

We believe that the goal of improving and maintaining a sound, safe and competitive motor carrier system has not been met. As our testimony indicated, the motor carrier system is not financially sound for a myriad of reasons—deregulation, recession, highway taxes, insurance, etc.—and there are signs the industry is becoming less safe. Thin profit margins or losses do not provide sufficient funds for safety programs, and could lead to deferral of some maintenance, especially preventive maintenance.

Also, we cannot confirm that the most productive use of equipment and energy resources has been achieved in the aggregate. With many more competitors and a stagnant or shrinking level of freight it is difficult to see how aggregate consumption of energy has declined.

Lastly, you ask whether efficient and well-managed carriers have been able to earn adequate profits, attract capital, and maintain fair wages and working conditions? Regulatory reform has not appreciably affected the financial performance of the most highly profitable companies, although wage levels have not kept pace with changes in earnings elsewhere. There has been a decline in the number of highly profitable firms in the business.

Question. You have noted the poor financial performance of the interstate trucking industry in much of the time that has elapsed since enactment of the 1980 Act. Do you think it is possible that the higher profit levels enjoyed by many trucking companies came as a result of protection provided by the regulatory system then in place, especially with respect to collective ratemaking?

Answer. Trucking, like any industry, will have its share of winners and losers, those which substantially outperform others as well as those who do poorly. Companies that generate higher than average profits do so on the strength of sound management and innovation. What distinguishes the best in trucking would equally distinguish the best in any industry regardless of its structure or degree of government control. The exceptional carriers today would be found among the exceptional carriers in the past and in all likelihood will continue to outperform competitors in the future.

We do not believe that regulation, or collective ratemaking, either created or sustained this group of companies. They would be profitable anyway. Nor do we believe that retaining collective ratemaking will produce other superior performers. Collective ratemaking serves as a guide to carriers in the direction and level of costs. Attempting to enhance profits by raising rates disproportionately would be foolhardy in the present environment of intense competition and overcapacity.

Even when the industry achieved reasonable profits, as in 1978, most firms could hardly be considered highly profitable. Against an average operating ratio of 94.6, twice as many carriers had operating losses than were highly profitable (19.1% with operating ratios over 100; 9.2% with operating ratios under 89.5). Both general freight carriers (party to the collective ratemaking process) and specialized carriers (independent rate setting) showed similar spreads around the average, and both segments had similar average operating ratios in 1978, 94.5 for general freight compared to 94.9 for specialized carriers.

American Trucking Associations, Inc.,
Alexandria, VA, October 2, 1985.

Hon. Bob Packwood,
U.S. Senate,
Washington, DC.

Dear Senator Packwood: The purpose of this letter is to add to the record the following information that was not included in ATA's September 27 written testimony on deregulation.

The Bureau of Motor Carrier Safety reports that from 1983 to 1984, truck accidents increased 18 percent. That is the highest increase in truck accidents since 1967.

In addition, truck accident related deaths were up 8 percent, 1984 over 1983, while the increase for all motor vehicle related deaths was only 3.9 percent.

Furthermore, truck accident related injuries increased 10.9 percent over the same 1983-84 period.

Sincerely,

THOMAS J. DONOHUE,
President and Chief Executive Officer.

Senator PACKWOOD. I am going to change the order now and take the out-of-town witnesses first. Please listen as I call your name—we will have to do it in two panels. Panel one will be Mr. Imperatore from New Jersey, Mr. Churchill from Missouri, Mr. Johnston from Missouri, Mr. Delaney, Mr. Hardman, and Mr. Lifschultz, if he got here from New York today.

And the second panel will be Senator Meiklejohn, Mr. Rasmussen, Mr. Davis, Mr. Paull, and Mr. Leach. And then after that we will see if anybody has been able to come and preside this afternoon, and where we are on the remainder of the witnesses.

Gentlemen, you have been very patient. We have only two microphones, so as you testify you are going to have to pass them back and forth. We will take it in this order: Mr. Imperatore, Mr. Churchill, Mr. Johnston, Mr. Delaney, Mr. Hardman, Mr. Lifschultz.

Mr. Imperatore.

STATEMENTS OF ARTHUR E. IMPERATORE, A-P-A TRANSPORT, INC.; KENNETH CHURCHILL, PRESIDENT, CHURCHILL TRUCK LINES; JIM JOHNSTON, PRESIDENT, OWNER-OPERATOR, INDEPENDENT DRIVERS ASSOCIATION OF AMERICA, INC.; ROBERT V. DELANEY, CHAIRMAN, LEGISLATIVE COMMITTEE, PRIVATE CARRIER CONFERENCE, INC, AMERICAN TRUCKING ASSOCIATION; AND JAMES C. HARDMAN, 60 NR COMMITTEE

Mr. IMPERATORE. Mr. Chairman, gentlemen, thank you very much for this opportunity to appear before you. I appear before you first as a citizen and as a businessman, and then as a freight operator with almost 39 years of experience. I heard some of the answers, and I would like to speak to you as a truck operator, my career having started as a truck driver after World War II, which at a time in which people emerging from the war were attracted to this industry. It was a time when the railroads carried very little of the freight that we presently carry in the trucking industry or in the freight industry, and I would like to make that distinction when we talk of trucking. We talk of a very multifacted transportation mode. Trucks of one kind can hardly deal with the commodities that trucks of another kind deal with.

The segment of the industry in which I have spent my career is the freight, the handling of small shipments in the general common carrier field, and I think it is important to distinguish that because there are problems that are peculiar to that industry, and in common carriage, and I think this is one of the myths that has built. It is something that we have lived with from when we were kids: If you put a piece of freight on a truck, you run the truck. It is very attractive, very exciting, very romantic. And you deliver the freight and you make a buck, and you are on your own, and you are doing something important and good for the country, and you build a place.

In the freight industry as it has evolved in the 50 years since the passage of the Motor Carrier Act 1935, the freight industry is a highly specialized field, especially that of common carriage of small shipments. We require today to sustain viability enormous investment of money, financial resources. We have got to have a very skillful management. We have to apply business judgments that are very timely and keenly demanding because we are really almost like bankers.

Common carriage in the civilized world has been evolving for maybe 500 years, so it is nothing new in the United States, and rules that applied in Western Europe and in England 500 years ago still apply in this country. Between an owner of the goods who tenders his goods to a carrier and the carrier's burden to deliver the goods safely to the destination.

We are bankers of a sort. We own the goods during which time they are in our possession. For instance, right now in our company we probably have a daily liability of somewhere between $75 million and $100 million, and it is kind of like a banking operation because we have the burden of control, and the burden of liability in toto.

Mr. Chairman, with your permission, I brought a member of our company who has a flow chart just to show you and the members of the committee the complexity of common carriage. It would take a minute. It portrays roughly 300 steps in the matrix of producing common carrier service.

With your permission, I would be glad to unravel it.

Senator PACKWOOD. Mr. Imperatore, you can, but we are going to have to hold the witnesses to the time limit. If you can do it in your remaining time, which is about a minute and a half.

Mr. IMPERATORE. I think it is essential, because even the Teamsters with whom I negotiated in the year 1970 at the inclusion of the first word, the first reference to the word "work" in the labor agreements were unaware of the complexities of the work that we did in their very industry wherein they represented people for then about 50 years.

Now, this is a flow chart that we have prepared showing the people and functions and control. It is the operating end of our business. It shows all of the steps, almost all of the steps, depending on the length of the haul.

Now, the biggest point of all that has been missed, in my judgment, so far and in the debate on deregulation, the biggest problem, Mr. Chairman and Senators, that I see is the problem of cost, the cost of providing service to the public, and under the 1980 law, in my experience and in my opinion, the costs have risen far higher than they otherwise would have if regulation not only had been applied, but if the law as passed by Congress had been enforced. You have got cross subsidies.

You asked the question, Mr. Chairman, as to why the shippers are favoring it. I will tell you. What shippers you have got, just like our industry is very complex.

Senator PACKWOOD. I have to ask you to conclude, Mr. Imperatore.

Mr. IMPERATORE. The big shippers in this country enjoy the leverage of their economic power at the expense of the small shippers, and that is the reason why they will appear and support deregulation. The fact is, many shippers, including most of the small shippers, have supported regulation.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF ARTHUR E. IMPERATORE, A-P-A TRANSPORT, INC., NORTH BERGEN, NJ

Mr. Chairman, my name is Arthur Imperatore. I am the Chairman of the Board of A-P-A Transport in North Bergen, New Jersey. I have been involved in motor carrier transportation for forty years. A-P-A Transport is a short-haul, highly service oriented motor carrier handling 6000 shipments a day, almost all of which are less-than-truckload quantities. The average weight of these shipments is 582 pounds.

Motor carrier employees are specialists. The transportation of all kinds of commodities involves several handlings of thousands of cartons containing commodities many of different value. The several tasks must be accomplished expeditiously, accurately and with great care in handling. Well trained employees are essential to any successful motor carrier operation. As a matter of fact, I have a chart here that clearly demonstrates it takes over 300 different steps to complete the successful transportation of any less than truckload shipment, irrespective of its size.

Transportation follows agriculture as our second most important commercial function. But because transportation is the vital link between buyers and sellers, it is exposed, in addition to normal internal forces, to a large number of external forces such as large city traffic congestion, weather conditions, inadequate dock facilities of shippers and receivers, critical production line scheduling of customers and the amount of freight tendered on any given day, all of which bear heavily on a motor carrier's productivity, its costs and ultimately the prices it must charge for the variety of shipments that it transports.

In addition, since the enactment of the Motor Carrier Act of 1980, the trucking industry has had to make major adjustments, amidst a severe recession, to cope with the thousands of new entrants and the wave of discounting. The industry is still reeling from these changes. I submit that it is much too soon for the Congress to even think of visiting any further disruption on the general freight motor carriers. The dust has yet to settle from the impact of the Motor Carrier Act of 1980. The Congress really needs to know much more about what is happening to this vitally important part of our nation's economy before it begins to introduce more legislative change.

The best that can be said for the bill proposed by DOT to complete the deregulation of the general freight trucking industry is that it is an ill-advised piece of legislation. It would have a devastating impact on the motor carriers and the public interests in general. Instead, what is needed is an Interstate Commerce Commission which is willing to accept the provisons of the present law and to carry out the enforcement of that law according to Congressional intent and purpose.

The trucking industry today operates amidst a plague of irrationally discounted rates. When the onslaught of unbridled discounting began to spread, the motor carriers petitioned the Commission on several occasions to use their expertise, to exercise their statutory jurisdiction and to take appropriate action to prohibit unlawfully discriminatory and below-cost rates from being applied by the carriers. These petitions fell on deaf ears. The Commission has chosen to fiddle while hundreds of well run carriers have fallen by the wayside, while productivity has dropped, and costs and rates have increased much more than they would have increased if the ICC had only done the job contemplated by the law that Congress gave them to faithfully administer.

The results are that as rates become more and more depressed—the rate increases are discounted even more as soon as they become effective—more good carriers either go out of business or become marginal operators. Financial deterioration on such a large scale soon leads to reduced attention to maintenance of equipment and ultimately a substantial deterioration in safety and fitness.

Mr. Chairman, I submit that the motor carrier industry currently is faced with too many serious problems for your subcommittee to recommend or even consider any bill which would propose to deregulate the industry in any way. Instead, I submit that you should continue oversight hearings and require the ICC to provide your subcommittee, no less than annually, with very important specific data about the condition of the general freight motor carriers with respect to profitability, discounting, discriminatory rates, below-cost rates, maintenance of equipment, safety, age of assets and changes in the labor force. That kind of information, coupled with input from the industry, will permit Congress to ultimately make a well-informed judgment as to whether or not any further deregulation should be inflicted upon an industry which is so vitally important to the economic well-being of our country.

In the interim, Congress should require the ICC to administer the 1980 Act as it was written and intended by the Congress, particularly with respect to discriminatory and below-cost rates.

Thank you.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony, you stated your strong support for continued antitrust immunity for trucking industry collective ratemaking activities. What specific characteristics set the trucking industry apart so that the price establishment must, in your view, be done collectively in order to be efficient?

Answer. Congress and the ICC have made competition a paramount factor in trucking today. To compete with the large nationwide carriers like Consolidated Freightways, Roadway, Yellow, etc., we must provide our customers with the same nationwide service at competitive through rates and charges. A-P-A only operates in the Middle Atlantic and New England regions. To handle a shipment going beyond the regions we serve, we need to establish joint line arrangements and rates with a number of other motor common carriers serving other regions of the country. No knowledgeable shipper is going to pay more for joint-line service than single-line service, so our rates and charges for joint-line service must be the same as the single-line rates and charges of the nationwide carriers.

When offering price discounts, the larger nationwide motor carriers generally vary their discounts by percentage amounts below the class rate level based on the revenue or tonnage a customer generates during a stated period, such as a month, quarter or year. The greater the amount of revenue or tonnage tendered, the greater the price discount. To remain competitive we must not only have nationwide competitive class rates for joint-line carriers service, but we must have, to the extent they are not below our cost, competitive joint-line price discounts. To do otherwise will only further increase the tonnage being handled by the large nationwide carriers, and more rapidly advance the concentration we now see taking place in the motor common carrier industry.

Small and medium-size carriers like A-P-A have found from long experience that the collective process is the most efficient and cost effective means by which they can establish the joint rates and charges which are competitive with single-line rates and charges of the large carriers. If we did not have to be competitive—if we only handled those shipments we could serve in single-line service—we could publish our own rates patterned on the collectively made point groupings, classification and class rate approach presently used. However, the fact that we must be competitive with national carriers in order to survive requires that we have a forum in which we can collectively made competitive joint rates applicable to all 125.000 points nationwide.

Consider in this regard that each carrier maintains numerous terminals at which traffic may be interchanged with scores of carriers. If each carrier published its own rates and tariffs, it would have to conduct separate negotiations and obtain separate concurrences from hundreds of carriers. It is highly doubtful that a network of service comparable to that resulting from collective action could ever be created by such laborious bilateral negotiations.

The end result of immunized ratemaking is the availability of a nationwide trucking network which makes it possible for a shipper to transport even the smallest amount of a given commodity between such points as Caribou, Maine, and Sweetgrass, Montana, at a predictable, single-factor rate with assurance that through motor carrier service is available. The existence of joint rates, uniform rules and through-route arrangments means that the shipper can deal with the origin motor carrier only, with complete assurance of origin to destination responsibility, including the processing or refunds and claims for loss and damage.

There are other characteristics of our industry which require collective action. Each of the 6,000 shipments we handle daily is unique in one or more respects. Those shipments consist of thousands of different types of commodities; and they move in diverse geographical markets, over thousands of different traffic lanes. Taking into account all these variances, each service we offer effectively constitutes a unique product. In order for this transportation marketplace to function efficiently, it is essential for carriers and shippers alike to be able to quickly determine in advance the relative cost of transportation millions of shipments daily. No one has yet devised a more efficient system than the rate bureau system of collectively made rates. We will, of course, continue to make improvements in the rate bureau system as we go along, but the fact is that it is still the most effective way of establishing a nationwide network of coordinated motor common carrier services and cost-related rates. It allows even the smallest carrier to remain highly competitive within a rational pricing environment.

The bureau system also eliminates the need for carriers to publish individual tariffs, all duplicating each other's class rates. By working as a group, carriers share in the cost of rate analysis and publication and thus keep expenses down. Shippers also benefit significantly from being able to locate in one tariff the rates of large numbers of carriers, and by being able to purchase such tariffs at reasonable cost.

Further, the collective process enables all carriers to price in a manner readily adaptable to computerization and automated rating and billing—an advantage for carriers and their customers. As I stated in my prepared statement, and as I attempted to demonstrate in a hurried fashion at the September 27 hearing, there are over 300 different steps involved in the transportation of any less-than-truckload shipment, irrespective of size. These steps include classifying the cargo according to its shipping characteristics and pricing it based on this classification, as well as on the distance the shipment will travel. All of this must take place like clockwork on the day the shipment is picked up, prior to moving it to the destination or break bulk terminal. It is necessary that most of the required paperwork travel along with the shipment to this terminal. As a practical matter, the paperwork—which includes rating and billing documents—must be completed soon after the shipment is picked up. To accomplish this efficiently in today's business climate requires maximum computerization. The existence of class rate structures, uniform grouping of points, zip code rates and uniform classification makes the computerization of the rating and billing process possible and cost effective.

Our costs would skyrocket if we had to manually perform these tasks on both single-line and joint-line shipments. The expense of initiating and maintained our own pricing system would be prohibitive and this would mean only greater cost to the customer for our service.

The fact that we work from a collectively established class rate level has not inhibited establishment of reduced rates or charges to meet the specific need of our customers. In fact, the collectively made class rates serve as a convenient benchmark from which we can depart. Percentage reductions from our class rates can be easily handled through our computerized rating and billing system. This not only makes our work more efficient, but also reduces the cost for auditing freight bills and, in some cases, even the need for conducting audits.

There is yet another crucial advantage to retention of antitrust immunity. Many of the motor carriers we interline with, and have joint-line rates with, have operating authority to the 48 states in the continental United States. Others have operating authority to provide single-line service to many of the points we serve. The trucking industry is unique in this respect. I believe we are the only industry where we compete against each other as to some traffic, but also coordinate with each other to jointly transport other traffic to meet the competition of the larger nationwide carriers.

Without immunity, our counsel advises that we would run a substantial risk of antitrust lawsuits should we establish joint rates with our competition. Since virtually all of our joint-line rates, and those of other small and medium-size carriers, are with competitors, the scope of this problem cannot be understated.

All of the above efficiency advantages to carriers of collective action translate into lower costs and better service for shippers. In addition, shippers benefit substantially from carrier collective action by virtue of the fact that it fosters the flow of the vital rate data shippers need to make informed transportation decisions. There is simply no more effective way for shippers to keep track of their rates—and the rates of their competitors—than through uniform bureau tariffs. Beneficial competition flourishes in this "open" rate and ratemaking environment created by collective ratemaking and bureau tariffs. In a "closed" system—in which there is no broad access to rate information—shippers would be unable to "comparative shop" to the degree they can today, and they would be unable to insure that the rates they are paying are fair in ralation to the rates of their competitors.

The foregoing makes clear that collective ratemaking—which is only possible because of the antitrust immunity we now have—facilitates joint-line arrangements that not only make us more competitive with the large carriers, but promotes efficiencies for carriers, and improves service for shippers.

Question. Rate discounting is a prevalent practice in the motor carrier industry. Given that collectively-set rates oftern are used only as a benchmark from which to determine the discount, why are the collective rates needed at all?

Answer. To a significant degree, I have already answered this question in my response to the previous question. The efficiencies of collective ratemaking are, to a large part, the reason why collective ratemaking remains as essential in today's environment as it was years ago. The fact that there exists substantial discounting does not reduce the importance of collective action; and, as I will show below, the existence of class rates actually tends to promote rational discounting.

To put the discounting issue in perspective, it is important to recognize that a considerable volume of traffic does move at collectively made class rates. In fact, these rates are not always the highest rates. In some regions, major motor carriers have independently published percentage increases above the base class rate structures for their account. Thus, we now have a situation where the collectively made class rate structures serve as a fixed base which carriers can either apply to their shipments or reduce or increase as they best see fit.

A nationwide system of rates and charges has moderated wide swings in rate levels. This has helped shippers and carriers alike to make rational management decisions. Moreover, as I stated in my answer to the first question, collective action is the only effective means small and medium-size carriers alike A-P-A have to compete with the large nationwide motor carriers and the best means of allowing less sophisticated carriers to rationally price their multiple services. I know this because we started in business as an extremely small carrier.

The fact that we have relatively stable class rate structures certainly has not dampened or prevented A-P-A or any other motor carrier from independently establishing a lower rate or a price discount whenever it needs or wants to. Collectively made class rates provide the carriers with an easy starting point in establishing reduced rates or price discounts that are better tailored to a lesser service, or to specific shipment characteristics. Furthermore, by discounting off of a base of class rates, we can still use our computer capability for rating and billing those shipments.

In fact, the existence of a class rate system makes it easier for shippers to compare rate or price discount proposals from various carriers. Consider the situation of a shipper who may have 150 different commodities to ship to 50 different distribution points. It is obviously relatively easy for such a shipper to compare an offer from one carrier to discount a bureau rate scale by ten percent, as compared with the offer of another carrier to discount from the same rate scale by 16 percent. If carriers were unable to reference a widely known class rate structure or commodity classification, the transaction costs associated with comparing bids and negotiating rates would be substantially greater than they are today for both shippers and carriers.

Moreover, the collective process allows the industry to recoup, when need be, industrywide cost increases such as increases in fuel, labor and insurance. As to this last point, it merits emphasis that the ICC is the ultimate arbiter of whether collectively made rates and reasonable and justified. It has substantial powers, which it does exercise, to suspend and investigate rate adjustments about which it has any questions.

While we are a unique industry, the antitrust immunity that we have is not unique. I understand antitrust exemptions exist for ocean carriers, air carriers, insurance companies, export trading companies, newspaper publishers, agricultural cooperatives, and others. Collective action for truckers is as essential as I am sure other immunized activities are for these industries. It has enabled us to 1) compete more effectively with national carriers; 2) price our services in the most efficient manner; 3) offer joint-line service without fear of antitrust risk; and 4) remain a financially sound and safe industry. The public has gained from retention of collective ratemaking. There now exists a highly competitive industry from a price and service standpoint—an industry which functions more smoothly by virtue of collective ratemaking.

Senator PACKWOOD. Thank you.

Mr. Churchill.

Mr. CHURCHILL. My name is Kenneth Churchill, and I am president of Churchill Truck Lines, Chillicothe, MO.

I want to express my appreciation to you, Mr. Chairman, and to my Senator Danforth from Missouri for the opportunity to appear here and express my concerns with this proposal.

We are a common carrier of general commodities operating throughout the Midwest, as far West as the west coast and as far East as the States of Indiana, Georgia, Wisconsin, and all States practically in between those areas.

We operate as a general commodity carrier in intrastate commerce within the Midwest in the States of Iowa, Illinois, Kansas, Missouri, and Wisconsin, and we do operate under regulations in all of those States except the State of Wisconsin, which has been deregulated. We have approximately 2,000 pieces of equipment. We have approximately 1,400 to 1,500 humans who work for our company, and without them we would not be much of a company.

Our company, for 1984, did about $85 million in gross revenue, operating in excess of 23 million miles, transporting almost 800,000 shipments comprising almost 580,000 tons.

Our average size shipment—and we are predominantly an LTL carrier—that average shipment runs about 1,475 pounds and comprises about 69 percent of our traffic. Nineteen percent of our traffic is handled in joint line service with other motor carriers.

So my concern is the fact that if we did not have antitrust immunity and collective ratemaking, that that 19 to 20 percent of our traffic would fall within the parameters of being illegal if we set rates with other carriers. Also an item that concerns me is the fact that in all probability we would not be able to use piggyback or trailer on flatcar service with the railroads, which we do in quite a large area, particularly between the Midwest and California, and therefore, I think that traffic might be subject to being discontinued because of no antitrust immunity.

I think a lot of the problems that face this industry are just too many people in the business chasing not enough traffic. So therefore, the volume of traffic is not there to support the overabundance of the people who are in the trucking business.

Our company takes great pride in our service to the public. We have been in business since 1926, and we still serve the same areas today that we served then. There is less traffic available in rural Missouri to us today because of the new entrants. Where we used to serve north-central Missouri as probably one of two carriers, today we have probably got 15 carriers serving that same area. But they do not serve the small towns. We still serve them. Instead of serving them once a week today, we used to serve them every day. But that is not the case anymore.

So I think there has been a deterioration in service to rural areas and small communities, even though you hear to the contrary.

I think that pretty well summarizes my concerns. You talk about safety. We are very interested in safety and always have been. It is a primary concern of our top management. I have been in this business 49 years, and I have always been concerned with safety and will always be in the future.

So I think that with the additional competition and the people that are new to this industry, I don't think they are as concerned about safety as the regulated common carrier industry is today.

Mr. Chairman, that winl conclude my remarks.

Thank you.

I will try to answer any questions you might have.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your testimony, you state that it is essential that the trucking industry preserve the right to obtain collective general rate increases to offset inflationary cost increases. Why can't the industry just take these costs into account when negotiating rates with individual shippers?

Answer 1. In my testimony before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science and Transportation, I stated that it was essential that the general freight trucking industry should continue to have antitrust immunity for the collective consideration of general rate increases. You ask, "Why can't the industry just take the costs into account when regotiating rates with individual shippers?" The nature of service performed by our company, as well as other motor common carriers of general commodities, makes it utterly impossible to negotiate general increases with our individual shippers. First, our company serves several thousand shippers located at our 5,500 direct service points, and through interline service with over 400 connecting carriers, serves many other shippers at all points in the United States and Canada. If we were to assign every available staff member to the task of negotiating general increases with our individual shippers, they could not possibly accomplish the task. Moreover, obtaining agreement with our 400 connecting carriers poses the same problems, but in addition, would involve serious risk of antitrust liability. Our company hold 48-state operating authority which overlaps that of all of our connecting carriers, and we both compete and interline freight.

When we face cost increases caused by increased wages, fuel prices, taxes, or other inflationary conditions, it is essential to all of us that offsetting general increases in revenue be promptly obtained. Profit margins for general commodity motor carriers are very narrow, averaging about 2% of operating expenses, while typical cost increases often range well over 2%. Therefore, if revenue increases are not obtained promptly and concurrently with major cost increases, serious losses can occur.

What may be considered to be a fairly modest general wage increase of 6%, for example, when experienced by general commodity carriers, may increase total carrier expenses by 3 to 4%, an amount sufficient to wipe out all industry profit and create serious carrier losses. Such an increase may have a varying impact upon shipments of various weights and distances, however.

The collective consideration of general rate increase allows consideration of the cost impact upon segments of traffic by weight bracket and distance, and enables our industry to apportion such cost increases against all shippers fairly and equitably. The ICC has promulgated evidentiary requirements under Ex Parte MC-82 that encourage such equitable action and which enable the ICC to evaluate such adjustments.

Negotiation or rates with individual shippers is an ongoing practice that accords all major shippers an opportunity to exploit any price-service characteristics inherent in their particular service requirements. Such negotiations are far too complex and time consuming to be dealt with when general increases are required.

Question 2. You clearly support continued collective ratemaking antitrust immunity for the trucking industry. Are there any other federal economic regulations which you believe should be retained? If so, which ones?

Answer 2. It is Churchill's firm belief that the basic provisions of the Interstate Commerce Act, properly administered, represent a sound method by which motor carrier transportation may be regulated. The maintenance of a uniform system of accounts and annual and quarterly reporting by carriers is one essential feature of regulation. This is and will be continually needed:

(a) To allow the general public a reliable source of information by which to judge the condition of the industry and the individual carriers whose services they utilize or consider utilizing.

(b) To enable motor carriers to monitor the health of their connecting carriers.

(c) To enable tdhe Commission to monitor and regulate the industry in accordance with their duty under the Act.

(d) To enable Congress to monitor the industry, the regulatory commission, and to provide a sound basis upon which to evalute the achievement of our National Transportation Policy.

Question 3. Do state regulations in any way hamper your company's operations? If so, please specify.

Answer 3. In addition to our interstate operation, we conduct intrastate operations within the states of Illinois, Iowa, Kansas, and Missouri. We believe the state regulations are sound and do not hamper our company's operations.

Senator PACKWOOD. Thank you, sir.

Mr. Johnston.

Mr. JOHNSTON. I think Mr. Donohue's opening comments with the analogy of putting the hurricane in the same perspective as trucking deregulation is probably a very good one. Looking out the window, I predict just about the same effect: A whole lot of buildup and very little blow.

With regard to some of the comments of the Teamsters Union, who certainly do collect dues from a great many owner-operators within the trucking industry but does not represent those owner-operators. Any of their employees or union members who are out of work, I would suggest that there are a great many jobs available and the industry is screaming for qualified, good truck drivers. So if they want to work, the work is there.

The issue we have before us today of further or even total deregulation of the trucking industry is probably the most important issue faced by the industry since it first came under regulatory control in the 1930's. Passage of the Motor Carrier Act of 1980 brought about sweeping changes in all segments of the industry.

It resulted in vast increases in the level and type of competition among motor carriers. This new competition has produced an unlimited number of new reduced cost options for the shipping community, which of course has resulted in reduced cost to the consumer.

For those within the trucking industry who were willing, able, and innovative enough to take advantage of the new opportunities, the results were extremely rewarding. However, for many a substantial barrier still remains. Most owner-operators and small fleet operators cannot avail themselves of the new opportunities because of the remaining regulatory controls.

Although in theory it is now a simple and inexpensive process to obtain ICC operating authority and begin competing for business, in reality it is quite a different matter. Essentially, for the small operator it is a catch-22 situation. In order to begin hauling for a shipper, you must have ICC operating authority. In order to obtain that authority, he must have the support of the shipper who wants to use his service.

For the small operator, who of course does not have a sophisticated sales staff such as the one we saw here, the only way that he can prove his worth and his productivity is through the performance of the transportation service. In most cases, when an opportunity for a business relationship does arise it must be taken advantage of immediately or the opportunity is lost.

Now, the remaining ICC regulations, the carrier must first obtain shipper support and then make application to the ICC for the necessary authority. This process takes a minimum of 3 months.

Putting this in perspective, can you imagine the results of any service type business entering into a contract with a potential customer on the basis that he will not be able to provide that service for a minimum of three months, when and if he gets the approval of some Government agency? I would say he would be at a substantial disadvantage in competing against those who already have permission to provide that service.

The consequences of this situation are that the small operator, who by the way is by nature the most productive and competitive entity in the industry, is still forced to operate under a franchise type arrangement through someone who already has the operating authority. In a great many instances, the holder of the operating authority owns no trucks whatsoever and operates exclusively through the use of owner-operators and small fleet operators.

This not only deprives the small operator of the opportunity to establish his own business arrangement, but also deprives the shipping public and ultimately the consumer of the full benefit of the increased productivity and efficiency of the small business operator in the trucking industry.

Another area which represents a substantial barrier to participation in the market by the small operator is the unbelievably complicated system of State licensing, permitting, and taxation requirements. As an example of some of the complicated licensing and permitting requirements, a recent situation which developed during the fuel tax subgroup of the National Governors Association Task Force on Uniformity I think exemplifies the magnitude of the situation.

The executive director of the National Association of Tax Administrators was seeking to gather information from all States on their fuel tax reporting procedures. Over a period of almost 2 months, he was able to obtain only partial information from about 85 percent of the States. Some did not respond, some responded with only partial information, while others responded with inaccurate information.

Although his purpose was to compare requirements rather than to actually obtain permits for a truck, it is ironic to note that the information he received would have been totally insufficient to allow him to actually go through the process of permitting or filing reports on a single truck.

Please keep in mind, this was the executive director of the Association of Tax Administrators, who has far more resources at his disposal than any one individual whose primary business is trying to make a living in the trucking business.

A significant effort is presently under way on the part of many private groups and State and Federal agencies to deal with the issue of State uniformity. While these efforts seem to be making some progress, progress to date has been extremely slow.

I see my time is about to run out. There is one other point that I think will be required in order to maintain some sense of stability and accountability in the trucking industry, and that is in regard to what we believe is an essential item to deregulation, and that is to add a mandatory shipping document that would in essence be a contract of haul, spelling out the responsibilities of each party to that movement.

I think it would be a necessary item, not only for stability both within the industry and the shipper community, but for enforcement purposes as well.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you, sir.

[The following information was subsequently received for the record:]

OWNER-OPERATORS INDEPENDENT DRIVERS ASSN. OF AMERICA,
Oak Grove, MO, November 15, 1986.

KAREN BORLAUG PHILLIPS,
Surface Transportation Subcommittee, U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR KAREN, This letter and attachments is in response to Senator Packwook's October 28th letter requesting additional comments to supplement the Hearing Record on the subject of truck deregulation.

In addition to responding to the specific questions I would like to use this opportunity to comment just briefly on some of the comments and testimony presented at the Hearing by other witnesses and some committee members.

First regarding Senator Danforth's expressed concerns about going slow on further trucking deregulation to allow the industry time to adjust to actions already taken and to allow it time to recover from other adverse occurrences and also his concern over possible safety implications.

I think it is important to note that there is absoulte nothing contained in the remaining regulations or in I.C.C.'s implementation of those regulations which would either in fact or theory create any type of moratorium or leveling off period for the industry. In other words it might make sense to delay further action if by doing so all conditions in the industry would remain unchanged or static for a certain period of time.

The reality is that the Motor Carrier Act of 1980 unleashed the forces of competition in an industry where very little competition was previously allowed to exist. Those forces will not stand still nor will they allow the industry to lay back and relax or recover during any supposed breathing period.

Those forces are presently, and will for some time to come, create enormous and constant change in the way the industry is structured and in the way it operates. Holding the line at this point will not shut off the flow of new entrants and increased competition nor will it do anything to stabilize rates.

Regarding the safety implications. The existing regulations serve only to inhibit the direct participation by those who are most qualified to operate safely and efficiently . . . that is the small business men and women, most with long records of safe experience actually operating trucks over the road. Existing regulations actually make entry easier for an individual who may have just a little financial backing, some clerical assistance, a strong desire to get rich quick and easy, and absolutely no experience in how to operate a truck or trucks safely. This assumption is supported in comments by Duncan McRay, President of Melton Truck Lines, during his testimony before the House Surface Transportation Committee the week of November 6th. He stated:

"Of the approximately 13,000 new carriers granted authority since deregulation, many use owner-operators as a method of getting started; these are the carriers that have caused much abuse of owner-operators. A new carrier with minimum financial resources uses the revenue generated by the owner-operator to finance its operation. As in all new business ventures, there is a high rate of failure, and the owner-operator ends up with no way to recover the money he earned.

"To a lesser extent, some established carriers that have been unable to operate in the new environment have failed, leaving their owner-operators among creditors with no means of recovery. In either of these cases, owner-operators have been abused while the carriers were trying to make a success of the operation.

"It has been tough, to say the least, for established financiallly sound carriers to operate in this environment. It has been devasting in many owner-operators."

Many suggest that most of the new entrants are independent truckers or owner-operators. This is not the case. Most are companies who neither own or operate their own trucks but simply apply for and are granted operating authority and then lease on owner-operators as independent contractors. It has been our experience that these entities are very likely to try to push the trucker beyone safe limits at less than adequate compensation in order to generate large profits for themselves.

This practice also spills over to already established carriers who all to often employ the same tactic to defend against this new competition.

It is our feeling that retention of remaining regulations which make it difficult and often impossible for the experienced truck operator (the small business operator) to make his own deal with the shipper are actually creating an atmosphere which generates unsafe operating practices. Removal of those regulations would remove the opportunity for the slick, fast buck operators to assert themselves as profit grabbing and unneeded middle men.

The owner-operator trucker, who would then be released from the pushing influence of this middle man, would then be able to set his own pace which would be safer and a great deal more efficient and profitable to him. This also would reduce the cost of transportation because the consumer would enjoy the direct benefit of the efficiencies of the small business operator without having to pay for the windfall profits to the unneeded middle man.

Senator Pressler also expressed some of the same concerns and referred to comments from other independent trucker groups which he would insert into the record. I have a great deal of respect for Senator Pressler and appreciate very much his efforts on behalf of owner-operator truckers. However, I feel it is extremely important to point that the independent trucker groups he referred to are really very small groups. The South Dakota Independent Truckers Association has fewer than thirty dues-paying members. The other affiliated groups he mentioned are: P.A. Truckers Association Inc., Summerset County Truckers Association Inc., Maryland Independent Truckers and Drivers Association, Owner-Operators of America, Concerned Truckers of Ohio and the Fort Bedford C.B. Clubs. All are of similar size with a combined dues-paying membership of far fewer than four hundred owner-operator truckers.

By this I don't mean to infer that there is anything wrong with being small. Most of those groups are very sincere in doing what they think is right to help owner-operator truckers. My point is that most of those groups have been in existence for almost as long as we have, having been founded around 1974 and 1975, and, if the positions they were taking on the issues were truely representative of the views of a significant number of truckers and ours were not, then they would have six or seven thousand members and we would probably be a local once-a-month social club.

I have attached for your information (Appendix No. 1) a recent C.P.A. audit report of our membership. We are presently probably the fastest growing Association of any type in the country. We are growing because we truely do represent the views and positions of the constituency we speak for. We take great pains to see to it that we represent those views accurately and to the best of our ability. We do this through constant communication and surveys of our membership. As you might imagine the particular issue of regulation or deregulation of the industry is one of the most significant issues to be considered in recent years. Considering this we have been even more careful to be certain we established the correct position. Be assured that our position favoring removal of existing regulations over the trucking industry (with considerations mentioned previously) is the position of a substantial majority of owner-operator truckers. Response to our most recent survey favored this position by a 5 to 1 ratio.

Some of the statistics presented by the American Trucking Association also deserve a brief comment. Specifically A.T.A. indicated that while the number of carriers was increasing dramatically, the volume of freight (according to statistics) had decreased thereby causing more carriers to be chasing less freight volume. Presumably this infers that many new trucks are being put on the road which are not needed and only add to problems of congestion and safety.

It should first be note that the statistics referred to are derived from information gathered from a fixed number of major established carriers and does not account for the present fragmentation of the industry. With over 15 thousand new trucking businesses it only stands to reason that those top 100 carriers would experience a reduction in freight volume. Our national economy has been thriving over the past few years. More people are working now than ever before and, as far as I know, everyone is still eating. The railroad has not made any substantial inroads into trucking's share of the intercity freight market and, in fact, all the information I have seen indicates that trucking is continuing to gain freight volume from the rails. In addition more rail corridors have been abandoned by the railroads in the past few years than ever before. Statistics from the Motor Vehicle Manufacturers Association will prove beyond a doubt that production of new class 7 and 8 trucks has been depressed since 1979.

What all this means is that there is not less freight available to haul . . . there is more. There are not a lot of new trucks on the road . . . the freight volume has simply been split among more carriers, most of who are using owner-operators. And, finally, it would be foolish to believe that truckers are running around half loaded. If that were the case why on earth would A.T.A. be continually pleading to be allowed to operate larger and heavier trucks. They are presently seeking allowance of double and triple trailer combinations in excess of a hundred feet in length.

It is also ironic to note that A.T.A. is now screaming about an insurance crisis when about two to three years ago they were appearing before your Committee asking for higher mandatory levels of public liability insurance coverage, supposedly to protect the public. We think to further limit competition.

In response to Senator Packwood's specific questions.

Question. In your view, does any of the current federal economic regulatory system benefit owner-operators?

Answer. The only remaining regulations administered by the Interstate Commerce Commission which benefit owner-operator truckers are those dealing with mandatory leasing requirements (49 C.F.R. 1057.12) that portion of the regulation referred to as Truth in Leasing Requirements.

Those requirements were designed to protect the owner-operator or give him some recourse against unscrupulous acts committed by some carriers. It was determined that the owner-operator was operating at a substantial disadvantage in his dealings with those carriers and that specific mandatory guidelines were needed to offset these conditions.

The provision for a mandatory shipping document (which would contain wording spelling out the rights and responsibilities of each party involved in the transportation movement as well as compensation and time of payment) would, we feel, adequately replace these provisions in a deregulated industry. We discussed this provision with the committee staff some time ago and feel very strongly that it should be included as a part of any further deregulation of the industry.

More directly to the subject of economic regulation of the industry. There are no benefits to owner-operator truckers in the remaining federal regulation of the trucking industry. Furthermore, I am certain little benefit remains for even the trucking companies I am sure if they would really consider the existing situation they would realize that, as Chairman Taylor has said on several occasions, all that remains is a gigantic and expensive paper shuffle. In my view they continue to fight deregulation because they hope that somehow this may lead to reregulation of the industry. They certainly cannot be gaining anything from the remaining regulatory shuffle.

Question. You have noted in your testimony the problems faced by owner-operators because of state regulations affecting interstate trucking operations. Do you see any rationale for the non-uniformity of these state regulations?

Answer. In our view the current system of state licensing permitting taxation and administration of intrastate economic regulation of the trucking industry is totally irrational. Under the current system each individual requirement and tax item is developed in a vacuum by many different departments in each state. No department seems to either care or concern itself with what other department or other states may be doing. Most importantly there seems to be absolutely no regard for what effect the cumulative actions of all these different departments will have on the trucking industry. The result of all of this can only be described as obstruction of interstate commerce.

Compounding this problem is the fact that many state trucking associations made up mostly of trucking companies based within a particular state see obstructive state requirements as a method of keeping out the competition . . . or as a method of retaliating against another state who may have put in place a particular requirement which they don't like.

The cost of this idiotic game is enormous and, although we do not have the expertise to accurately estimate the total amount, it certainly is in the hundreds of millions of dollars. This cost, of course, is passed on to the consumer in the form of increased transportation rates.

We don't want to leave out the railroad interests of course who expend huge effort and dollars in lobbying for increased truck taxes and more onerous and burdensome requriements.

Question. Do these regulations pose a significant competitive problem overall for owner-operators compared to other trucking companies?

Answer. The per truck cost of compliance is estimated to be approximately eight times higher for the small operator than it is for the large operator. This is just to get the paperwork done in order to comply. The actual cost of the fees is also higher for the small operator because many of these fees are set per fleet and are the same whether that fleet consists of one truck or one thousand trucks. For example, most states require the trucker to pay a fee to file his interstate operating authority with the state in order to operate through the state. As an example, the State of Oklahoma, which had a fee of $100.00 per fleet, applied that some $100.00 fee to all size fleets whether 1 truck or 1,000 trucks. Our recent court challenging (see Appendix #3) reduced the amount of the fee but the same amount is still applied to all regardless of number of trucks.

The additional costs imposed on the small operator of state compliance are, however, only a small part of the real problem that this system creates for the owner-operator seeking to compete in the trucking business. The fact is that the hundreds of different requirements collectively imposed by the states are also constantly changing (see Appendix #4). Even if the trucker was able to accomplish the impossible task of learning all of the present requirements while trying to operate his business and make a profit, it would still not be possible for him to keep up with the daily changes in all of those requirements.

The fact is he cannot participate directly in this new competitive industry without hiring the expensive assistance of a licensing and permitting service. For the larger company this is not a major obstacle because they simply hire staff to handle compliance. Carriers and their state associations and A.T.A. in some cases have an interest in continuing this complicated system because it holds down competition and keeps the small operators tied to the larger carrier.

Question. Could you provide the Subcommittee with any more specific examples of burdensome and unnecessary state regulations for the record?

Answer. Some examples have been mentioned above, Additionally I have enclosed copies of communication from Marlys Phipps (Appendix #5), one of our Directors who does her own licensing and permitting for a one-truck operation in which she sites several examples. Also Appendix #6 and #7, which are two brief reports from the National Governors Association Task Force on State Uniformity, are enclosed. These documents, of course, result from an ongoing effort to address the problem. However, they do in fact exemplify the magnitude of just a part of the problem. I also have some real concerns about the final outcome of this effort because it is intended that states voluntarily develop or adopt the uniformity recommendations. If past experience is any teacher, this will never happen without federal intervention.

I hope this information is helpful. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

JIM JOHNSTON, *OOIDA President.*

Senator PACKWOOD. Mr. Delaney.

Mr. DELANEY. Thank you, Mr. Chairman.

My name is Bob Delaney. I am employed by Leaseway Transportation Corp., a provider of physical distribution services. My experience and qualifications are summarized in the appendix to my testimony.

My testimony today is in behalf of the Private Carrier Conference. I serve as a director of the conference and chair its legislative committee. Mr. Chairman, the Private Carrier Conference consists of manufacturers, wholesalers, retailers, and suppliers. Regarding safety, our corporate identification and brand names appear on the vehicles we operate.

I am shocked and disappointed by ATA's president Mr. Donohue's testimony suggesting that private carriers are unfit that have any relationship to a recent finding of an 18-percent accident rate in 1984. No class of motor carriers is more concerned about the public safety than private carriers. Accidents happen to our customers, Mr. Chairman.

There are many errors of fact in the testimony this morning. I intend to purchase the record and the Private Carrier Conference will ask for time to set it straight.

With respect to market share, the private expenditures for private carriers, the carriage by manufacturers, wholesalers and retailers, are $68 billion in 1984. That grew by 9 percent since 1981. In comparison, the revenues of $52 billion for the for-hire industry grew less than 3 percent since 1981. This industry is more than the dues payers of the American Trucking Association.

If we are looking for who is carrying the LTL freight, inasmuch as the Department of Commerce and the Federal Reserve indicate we have had a 25-percent increase in industrial production and retail sales since 1982, it is the private carriers carrying the LTL freight.

We are operating more than 60 percent of the intercity miles historically and we are gaining in share as a result of the efficiencies obtained in the Motor Carrier Act in 1980. Empty miles have been reduced by two-thirds, 200,000 class 7 and 8 over the road tractors have been squeezed out of the system. That is a 15-percent increase in productivity.

The important point is the number of vehicles operating in interstate commerce, not the number of carriers operating, with operating authorities.

This committee knows better than I that after-tax profit margins of manufacturers, wholesalers, and retailers have declined since 1981 and are forecast to decline through 1988; 20 percent of the products in our economy are imported. Our list of troubles is growing; 75 percent of the soft textiles and shoes sold in our economy are imported.

Productivity or output per person has gained 3 percent between 1981 and 1984. It has been flat in 1985. Physical distribution productivity of manufacturers, wholesalers, and retailers must be encouraged to improve. That is the thrust of the Private Carrier Conference testimony.

Too much waste continues to occur because of our inconsistent economic regulations imposed by 44 States, requiring dual operations. There is economic tension between efficient interstate operations and inefficient intrastate operations.

Mr. Chairman, we are one country. We compete in one world. The Japanese have perfected the just-in-time inventory system, but we cannot wait for the Japanese to come to the United States and teach us how to do physical distribution operations.

The national carrier concept, which would exempt motor carriers operations in three contiguous States from economic regulation by any one State, strikes me as a sensible accommodation with States rights on the one hand and the need to improve our distribution productivity on the other.

One final point, Mr. Chairman, that struck me this morning watching you and Senator Long about your respective constituencies. It strikes me that one of the things you have in common is a relationship with a forest product industry, and I think it is interesting to think of the harsh environment that that industry has faced in relation to the trucking industry.

It is faced with erratic housing starts, it is faced with rapidly changing interest rates. The Canadians have come forward and taken one-third of the market. In the South it is faced by competition from Brazil. Now the beetles are marching from East Texas into Louisiana to consume the southern pine.

It is harsh out there. It is tough for all of us. It is time for this industry to quit complaining and start to perform.

We encourage the direction and the vision you are showing. We respect it enormously and we hope you proceed to deregulate the industry further.

[The statement follows:]

Statement of Robert V. Delaney, on Behalf of the Private Carrier Conference, Inc. of the American Trucking Associations, Inc.

My name is Robert V. Delaney. I am employed by Leaseway Transportation Corp. as Vice President for Strategic Planning. Leaseway Transportation is a group of companies which provide cost effective physical distribution services to manufacturers, wholesalers, and retailers. My experience and qualifications are summarized in the Appendix to this testimony. I appear today on behalf of the Private Carrier Conference, Inc. I currently serve as a member of its Board of Directors and as Chairman of its Legislative Committee. As the Committee is aware, PCC submitted extensive oversight testimony on September 9, 1985 through its President, Herman Granberry, the Director of Transportation for West Point Pepperell, Inc. concerning several recomendations for further motor carrier reform. Drawing from his testimony on the matter of the overriding need for a federal preemption of inconsistent state enconomic regulation, I would like to expand on this particular area today because PCC believes the net effect would be to the productivity of private fleet operations and at the same time assure the continued excellent safety record of private carriers—ever a most vital consideration.

PENDING MOTOR CARRIER REFORM PROPOSALS

Although PCC is on record as supporting the elimination of economic entry and rate regulation of the trucking industry at the federal level as well as the elimination at the federal level of antitrust immunity for collective rate making, the retention of meaningful federal level as well as the elimination at the federal level of antitrust immunity for collective rate making, the retention of meaningful control of size and weight limits, safety regulation and insurance requirements together with suitable access to federally supported highways, PCC must emphasize that interstate private carriers are encountering severe productivity problems at the state level with respect to the dual use of their fleets. Resolution of these problems will in no way compromise the enviable safety record of private carriers.[1] Relief is earnestly sought for these problems in order to optimize the use of private carrier fleets.

By way of background, let me emphasize that the overwhelming number of linehaul fleets utilized by private carriers in the United States are utilized on a dual basis, that is, they function on both an interstate and intrastate basis. Frequently, the same trucks and drivers, often carrying the same load, operate on an intrastate and interstate basis. Thus, it is not at all uncommon for a private carrier to pick up and deliver products within a state and, as a continuation of the same journey, pick up and deliver products on an interstate basis—all to the same end of enhancing productively the non-transportation primary business activity of the private fleet operator.

Ironically, the very efficiencies that private carriers have achieved at the federal level have not been paralleled at the state level. In general, the states still operate with a very "heavy hand" on the trucking industry and this adversely affects the productivity which dual-use fleet private carriers enjoy at the federal level with respect to interstate operations which need to be complemented with parallel intrastate motor carrier flexibility

As matters now stand, worthy though many of them are, the motor-carrier reform proposals sent to Capitol Hill on September 12, 1985 by the Secretary of Transportation do not in any meaningful way address the matter of economic regulation of the trucking industry at the state level—even for dual-use fleets. This is a very serious defect in the DOT bill as far as private motor carriers are concerned. Section 61 of the DOT bill would prevent a state from reregulating formerly regulated interstate motor carrier activity, but it would not prevent a state from continuing to regulate disadvantageously intrastate activity of a dual-use fleet, such as those used by private carriers. Moreover, although in Section 61 the DOT bill proposes for study the so-called intrastate regulation problem, it would not directly do anything about preempting inconsistent state economic regulation over dual-use fleets. These provisions are grossly inadequate to deal with the problems which private carriers are encountering at the state level.[2]

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[1] PCC notes the arguments of the traditional regulated forhire carriers to the effect that deregulation diminishes safety compliance. This has no basis in historical fact. Private carriers have never been economically regulated. Yet they have been subject to the same safety regulation as economically regulated common and contract carriers. For nearly fifty years, there never has been demonstrated any significant difference in safety regulation compliance between these two segments of the overall trucking industry. Economic regulation is irrelevant to safety regulation compliance.

In contrast, PCC commands the "national carrier" concept delineated in the National Motor Carrier Productivity and Safety Improvement Act, recently introduced by Congressmen Moody and DeLay as well as others. Reference H.R. 3222. "National carriers," those which operate in a minimum of three states, would be free of state economic regulation with respect to their dual operations, but very importantly would be subject to plenary DOT safety jurisdiction for intrastate movements. PCC would like to see similar provisions in any Senate-introduced legislation because such provisions would address in a very substantial and meaningful way the predicament in which private carriers frequently find themselves at the state level with respect to the dual use of their proprietary fleets. So PCC recommends that this committee consider formulating similar provisions in any motor carrier reform bill that it develops.

PCC turns now to some illustrations of the types of problems which its members have encountered at the state level or problems which could reasonably be expected if further motor carrier reform efforts do not include a substantial intrastate preemption of inconsistent state economic regulation of motor carrier operations.

Illustrative problem encountered by private carriers at the state level with respect to dual-use fleets

There are problems with the definition of private carriage itself. These problems are expected to increase if we get more federal deregulation without concommitant preemption of inconsistent state economic regulation. This so-called "primary business test" has been the law of the land at the interstate level in terms of deciding what is and what is not lawful private carriage. Reference 49 U.S.C. §§ 10102(14) and 10524(a). Briefly stated, it means that a shipper is a private carrier if it conducts transportation operations within the scope of and in furtherance of its non-transportation primary business activity.

Unfortunately, many states do not have in their local statutes any definition of what a private carrier is. If we lose the fedeal definition by virtue of the elimination of entry requirements for common and contract motor carriers, then these states, subject to local pressure from state regulated carriers, may come in with very restrictive private carrier definitions. The net effect would be to have a more restrictive scope of private carriage at the state level than at the federal level for the same dual-use fleet. Moreover, some states have restrictive defintions at this time, but have not enforced them in light of the "gravitational pull," if you will, of the broad federal defintion. If we lose the definition of private carriage at the federal level by virtue of eliminating entry restrictions, these states could start enforcing more restrictive conditions against private carriers such as requiring title to goods being transported. Title is not needed at the federal level. All PCC is saying is that, as developed, the federal law of private carriage should not only be kept alive in the context of further motor carrier reform, but also that it should preempt inconsistent state definitions of private carriage with respect to dual-use proprietary fleets. It appears that H.R. 3222 would achieve this goal.

This definitional problem is also very acute with respect to intrastate compensated intercorporate hauling among 100% commonly-owned corporations. At the federal level, this is lawful private carriage, having been legislated into existence in the Motor Carrier Act of 1980. Most states, however, regard compensated intercorporate hauling as for-hire carriage requiring operating authority. Thus, if we have a fleet at the federal level performing CIH without operating authority as a lawful private carrier, the same fleet in most states cannot function without obtaining local operating authority. We thus have a strange hybrid of interstate private carriage and intrastate for-hire carriage. Even if local authority is available, it is a different classification, it is costly to obtain and requires a lot of regulatory compliance. Accordingly, congress, in any further motor carrier reform effort, should preempt inconsistent state regulation of compensated intercorporate hauling among 100% commonly-owned corporations to make it consistent with the absence of regulations at the federal level with respect to dual-use proprietary fleets. H.R. 3222 would do this.

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[2] Much to its credit, however, the DOT bill would retain present safety regulation of the industry. Maintaining and strengthening safety enforcement is a very desirable regulatory goal—no matter what further economiic deregulation is achieved.

The same is true with respect to single-source leasing. Single-source leasing of trucks and drivers is a lawful means of implementing private carriage at the interstate level. About half of the states do not permit private carriers to single-source lease their trucks and drivers. With respect to dual-use fleets, these inconsistent state laws and regulations should be struck down by a partial preemption. The net effect would be that the private carrier at the interstate level could single-source lease its trucks and drivers and could use them at the state level in dual-use fleet operations. No state should be allowed to interfere with a private carrier who chooses to implement its proprietary fleet operations with single-source leasing. In many situations, such interference can render nugatory to the private carrier the single-source leasing option at the federal level if intrastate activity with the proprietary fleet is essential to its overall productivity.[3]

I would like to turn now to further need for a federal preemption of inconsistent state economic regulations with respect to dual-use fleets of private carriers that involves other private carrier options available at the federal level, but which are frequently not available at the state level. These are outside the scope of the definitional problems just recounted.

Private carrier supplemental options

Private carriers at the federal level can get supplemental operating authority to act as a for-hire carrier. This service reduces empty miles and achieves better loading of vehicles, thereby increasing the operating efficiency of the private carrier. Unfortunately, and all too frequently, private carriers with dual-fleet utilization encounter serious difficulty at the state level in getting supplemental operating authority-usually contract authority. In some cases, they cannot get it at all because of severe entry restrictions. In other cases, it is obtained with difficulty and after much delay. Moreover, even when obtained, particularly with respect to contract carrier authority, there are often very restrictive conditions attached to it.

For example, many states enforce minimum rates on contract carriers so as not to permit competition for the motor common carriers that are licensed by a state. Many impose territorial limits, still others impose commodity limitations. This stultifies the meaning of rate competition and prevents a private carrier that gets contract carrier authority at the state level from using it effectively to offer attractive rates in all geographic areas to shippers of all commodities that would like to use the private/contract carrier to haul for-hire traffic. Often these are the same shippers whose interstate traffic is being hauled without limitation of any kind by this carrier.

Still other restrictions on contract carrier authority at the state level, even where it is obtained, are on the number of shippers that a carrier can serve. At the federal level, there are no restrictions on the number of shippers. This further compounds the difficulty that a private carrier has who wants to use a dual fleet at both the federal and state levels and offer supplemental for-hire contract carrier service to shippers. In many cases, here too, often it is the same shipper that wants interstate and intrastate for-hire service.

Preemption seems to be the answer to stuations like these. Although the DOT bill does not address this issue, H.R. 3222 does. It should, therefore, be reviewed carefully by this Committee.

The same is true with exempt agricultural commodities. At the federal level, there is a vast list of exempt agricultural commodities which anyone, including a private carrier, can move on an interstate basis without operating authority. The same is not true at the state level. Many states have either no list or a very restrictive list. There is no consistency state-to-state or state to federal. Thus, a private carrier which wishes to use its fleet on a supplemental basis to haul for-hire exempt agricultural commodities can only do so on an interstate basis. The dual-use proprietary fleets should be used on an interchangeable basis to haul the same agricultural commodities on an exempt basis at both the state and federal levels.

Private carriers with dual-use fleets can trip lease their trucks and drivers to ICC-regulated carriers, thereby assuring the productive use of both by the elimination of dead-heading. Most states prevent private carriers from trip leasing to state regulated for-hire carriers. This option should be common to both jurisdictions. Ironically, the states are preventing their own regulated carriers from issuing needed extra trucks and drivers.

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[3] Intrastate surveys conductd by the Private carrier Conference about single-source leasing and compensated intercorporate hauling are contained in the testimony of Herman Granberry, given to this Committee on behalf of the PCC on Sept. 9, 1985.

Preemption of inconsistent State regulation is the real productivity issue for private carriers

As far as private carriers are concerned, the preemption of inconsistent state economic regulation that adversely affects dual-use fleet private carriers, such has been detailed in this testimony, is the real dollar issue. Significant economic benefits could be derived by the nation's private carriers from further motor carrier reform in this regard. Although the Private Carrier Conference certainly supports elimination of federal entry requirements and the elimination of antitrust immunity and other rate regulation at the federal level, these, as a practical matter, are not dollar isues for private carriers. Desirable as they are, they will not introduce more competition into the trucking industry beyond that already introduced so effectively by the Motor Carrier Act of 1980.

Where more competition is needed is at the state level. Private carriers with dual-use fleets woud like to operate at the state level on a basis consistent with their operations at the federal interstate level. By and large, at present, competition is restricted at the state level. Parallel economic gains in terms of motor carrier efficiency, particularly for private carriers who utilize their fleets on a dual basis, can be obtained at the state level, but only by a federal preemption. It is not likely that the states in and of themselves will change sufficiently without the force and effect of federal law which will permit the dual-use fleets of private carriers to function at the state level at the same basis that they function at the federal level.

Preemption, as PCC sees it, is a piggy-back issue. It will either go through with further motor carrier reforms at the interstate level or not. It wil never pass on a stand-alone basis. This is why the DOT bill's call for a study after other federal reforms are in place will not be effective. If further motor carrier reform is put into effect at the federal level without preemption of inconsisent state economic regulation, then the state will be able to continue indefinitely to hobble and emasculate the impact of these federal reforms with respect to the dual-use fleets.

Congress in the past has set ample precedent with respect to state preemption in the regulation of the rail, bus and airline industries. Thus far Congress has not enacted parallel and appropriate provisions with respect to state preemption for the motor carrier industry. It should do so now. The experience in these other industries has been favorable. Motor carriers, particularly private carriers, should be freed from the shackles of inhibitory state economic regulation. As we view it, one of the most meaningful things the Congress can do is to preempt inconsistent state economic regulation. It will advance the cause of competition and service in the motor carrier industry at the state level as the Motor Carrier Act of 1980 did at the federal level.

And it will do so without in any way diminishing safety compliance which PCC wholeheartedly supports. Indeed, PCC believes that productivity gains through less restrictive economic regulation can actually enhance safety on the highways. Private carriers that operate more economically efficient fleets can channel even greater resources to safe driver selection, training and scrutiny as well as improved vehicular safety.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. It is clear from your testimony that the Private Carrier Conference supports pre-emption of state economic regulations which affect interstate carrier operations. Would total federal economic deregulation without substantial pre-emption be of help to private carriers?

Answer. The nation's private fleets have benefited greatly from the Motor Carrier Act of 1980 and subsequent deregulatory actions undertaken by the Interstate Commerce Commission. Private carrier operations are much more efficient; there is much less empty mileage. Just-In-Time inventory flow has improved. And transportation costs have been contained with consequent benefits to consumers.

As a result of this experience, the Private Carrier Conference favors further trucking industry reform at the federal ievel and the initiation of meaningful reform at the state level. PCC's Statement of Policy may be characterized as:

(1) supporting the elimination of economic entry and rate regulation of the trucking industry at both the state and federal levels, as well as

(2) supporting the elimination at both the state and federal levels of the remnants of antitrust immunity for collective ratemaking, but

(3) urging retention of meaningful federal control of size and weight laws, safety and insurance requirements and access to federally supported highways and

(4) supporting the preservation at the federal and state levels of a uniform definition of lawful private carriage.

However, the real dollar issue lies with pre-emption of inconsistent intrastate economic regulation. In fact, *The Private Carrier*, the monthly management journal of the Private Carrier Conference, last May published a readership study that showed private carriers consider intrastate regulation as the second biggest challenge facing them, right behind state and federal taxation.

Virtually every other change that could be brought about under the heading of motor carrier reform, such as elimination of entry requirements at the federal level, tariff filing requirements and even the elimination of antitrust immunity, would not intensify competition in the marketplace that much. But pre-emption would and would benefit the nation because it would bring on line additional carriers who could function at the state level as well as the federal level—both in terms of improved service, more attractive rates and other direct benefits to the nation's shippers. The absence of a pre-emption has proven a great detriment to the nation's private carriers in the past five years.

Reforms enacted as a result of the Motor Carrier Act of 1980 have benefited private carriers at the interstate level but are frustrated at the intrastate level—particularly with regard to the dual use of the same fleet for interstate and intrastate movements. The states that do not go along with the federal definition of private carriage or who do not allow the implementation by private carriers of the same options that have become available at the federal level frustrate unreasonably burden the efficient movement of traffic by private carriers in interstate commerce.

Frequently, the frustration occurs because private carriers in many cases foresake the exercise of these federal options where they would not be able to effectuate, on a parallel and needed basis with the same truck and driver (certainly the same fleet), the identical kind of transportation service on an intrastate basis. It is becoming clear, therefore, that valuable as the federal options are, their full utilization depends on complementary and consistent regulatory freedoms at the state level in those states where such options are not recognized or are frustrated by the "heavy hand" of regulation.

This comes under the heading of "states rights," with all its political sensitivity. Nevertheless, Congress is going to have to be quite forthright about acknowledging these problems and adamant about resolving them. Otherwise, private carriers will be left to the mercies of individual states. PCC thinks that Congress has the power to pre-empt inconsistent and burdensome state economic regulation over trucking, particularly that regulation which adversely affects private carriers in the instances just recounted, and that such pre-emption would be completely consistent with basic constitutional law principles and case precedent. Congress has done it for the airlines, the railroads, and bus lines. It is time to do it for dual-use fleets operated by private motor carriers. Intermodal competition and overall operating efficiency demand no less.

Question 2. Safety is a serious problem in the motor carrier industry. What has been the safety performance of the private carrier sector of the industry since enactment of the Motor Carrier Act of 1980?

Answer. Recently, there has been a concerted effort to link trucking deregulation to a recent increase in truck accidents. The Private Carrier Conference rejects such sensationalistic and one-deminsional logic as simplistic. To drag incomplete safety statistics into the debate over economic regulation does the trucking industry a disservice and clouds the debate over both continued trucking reform and safety.

There can be no disputing the fact that truck accidents climbed an alarming 18 percent last year, rising from 31,628 in 1983 to 37,300 in 1984, according to statistics released by the Bureau of Motor Carrier Safety. But one year hardly constitutes a trend. See below.

TOTAL ACCIDENTS

[Numbers in parenthesis are percent of total]

Year	Total	Private	Authorized
1975	24,274	4,898 (20)	18,791 (77)
1976	25,666	5,017 (19)	20,073 (78)
1977	29,936	5,781 (19)	23,726 (79)

TOTAL ACCIDENTS—Continued

[Numbers in parenthesis are percent of total]

Year	Total	Private	Authorized
1978	33,998	6,493 (19)	26.955 (79)
1979	35,541	6,872 (19)	28,206 (79)
1980	31,389	6,232 (20)	24,724 (78)
1981	32,306	6,330 (19)	25,588 (79)
1982	31,759	6,341 (20)	24,493 (77)
1983	31,628	5,781 (18)	24,845 (78)
1984	37,300	6,255 (18)	29,893 (80)

However, a more deliberate and thorough analysis of the numbers shows that this is but a one year blip. In fact, in 1979, the last full year of regulation, the number of accidents was higher than in any of the next four years. And the total number of truck accidents actually dropped in both 1982 and 1983 from earlier years. In addition, the rate of commercial vehicle accidents per million ton-miles was lower in 1984 than in 1979, the last full year of economic regulation. Can these "favorable" statistics also be "blamed" on deregulation?

The Department of Transportation has reported that truck accident rates are about one accident per million miles for any type of carrier regardless of whether it is a regulated common or contract carrier or an unregulated carrier. The Bureau of Motor Carrier Safety's accident reports for 1983 suggest that unregulated private carriers totaled only 18 percent of all truck related accidents and exempt carriers accounted for 3 percent. At the same time authorized carriers reported 79 percent of all truck related accidents.

The grim statistics of driver fatalities reveal that authorized carriers accounted for 74 percent of driver deaths, while unregulated private carriers were responsible for 22 percent and exempt carriers totaled 4 percent.

Clearly trucking accidents statistics provide dramatic, sensationalistic fodder for the deregulation debate but perhaps may more accurately reflect cheaper gasoline prices, more passenger cars, increased highway speeds, greater congestion and an expanding economy. Furthermore, the average mileage for both passenger cars and combination vehicles has edged up since 1980. Total mileage is also up, from 1.529 trillion miles for all vehicles in 1979 to 1.649 trillion in 1983, the last year for which such statistics are available.

This is not to give short shrift to the serious problem of truck safety. Clearly, the trucking industry has, as one of its primary responsibilities, the safe and courteous operation of each and every one of its vehicles. Private carriers, traditionally unregulated truckers, share that deep concern about highway safety— and their safety record reflects that.

Senator PACKWOOD. Thank you.

Mr. Hardman.

Mr. HARDMAN. My name is James C. Hardman and it is my pleasure to represent the 60 NR Committee before you. The 60 NR Committee is a coalition of responsible shippers, carriers, and suppliers of the industry, and we are very active in the passage of the STAA, and we want to thank you for your cooperation in the enactment of that legislation. We think that the country has profited considerably as a result of that legislation and that there are greater efficiencies and greater economies without any compromise in safety.

We are basically appearing before you today, however, to express concern over the administration of that particular legislation by the Federal Highway Administration, and we feel that they are impeding and hindering the full scope of the STAA from being experienced.

Our particular concern when that legislation was passed was in terms of grandfathering trailers—certain trailer size—to ensure that there was no backward movement where States might prohibit size trailers that had been operating. At the present time there is a dispute involving at least a minimum of 18 States based upon studies that the FHA has made, and we feel that this has resulted because they have ignored evidence that the industry improved, such as the 60 NR Committee has given, and relied merely on statements or conclusions or assertions of State officials.

Just to give you an example, in the State of Mississippi, trucks were being stopped, there were fines, there were back-and-forth legal problems over whether 53-foot trailers could be operated in the State of Mississippi. The officials at the State of Mississippi did not really know what size trailers had been operated in the State before and had merely informed the agency that, to the best they were able to determine, 50-foot trailers had been operating.

And when we presented exactly the same evidence that we presented to the agency, the State of Mississippi agreed that 53-foot trailers had been operated and should be allowed to be operated in the future. This was evidence that was presented to the agency and apparently just ignored.

Also, in the act, you provided that there would be grandfathering, that you would grandfather trailers where there was lawful use and actual use. The agency, however, has interpreted that to mean nonpermitted operations, so that if there is or there was operations, lawful and actual operations, but under permit, that these would not be grandfathered.

Now, in essence, most of the operations of the larger and more productive trailers were under permit. So if that viewpoint were to prevail, in effect they would be overruling the legislation that you in your wisdom enacted. And what it does, it prohibits the use of the more efficient and economical trailers to a great extent.

The other prime area where there are problems that still exist is in terms of the overall length limits. The agency has taken the position that overall length limits can still be established on any highway if they involve trailers of over 48 feet and that overall length limit existed prior to the grandfather date. They have also take the position that overall length limits can be set on nondesignated Federal highways.

The first view has been rejected by the judiciary in three separate cases. However, there has been no indication from Federal Highway that they will—that they now agree with the judiciary and also with the statute itself.

In respect to the second position, that was rejected by two courts, one court agreeing. But if the Federal Highway viewpoint is to prevail, what effect this has is that carriers and shippers, private shippers, have to resort to the lowest common denominator, and that they will then operate shorter tractors, which the legislation was enacted to actually encourage the use of larger, safer trailers.

As a practical matter, just to give you an example, there is a new tractor being developed by a major manufacturer which is a stubnosed conventional trailer that would increase fuel economy by double the industry average and have better maneuverability, a tighter turn circle, and every other aspect that would make safer operations.

But because of the overall length limits that the Federal Highway still seems to want to impose, carriers and shippers would not have the advantages of these trailers. And as just an aside, this would mean approximately an 8.8-percent mile savings for owner-operators and it would mean that they could increase their operation substantially.

And finally, I would just like to make brief mention of the access problem, because it is covered in my statement. But I heard the testimony earlier today about the need to serve small communities, and these communities are basically off the Federal designated highway, and if there is concern about service to those communities and if they have the larger trailers, the access provisions are going to have to be increased.

Thank you very much.

[The statement follows:]

STATEMENT OF JAMES C. HARDMAN, ON BEHALF OF THE 60 NR COMMITTEE

My name is James C. Hardman. I am Vice President-Administration and General Counsel of the Dart Transit Company in St. Paul, Minnesota, and I am here today representing the 60 NR Committee to comment on the Surface Transportation Assistance Act of 1982 (STAA) and particularly that section dealing with commercial motor vehicle length limitations.

The 60 NR Committee is an association of carriers and shippers who are involved in the transportation of low-density freight. The group is interested in the use of large capacity semi-trailer equipment for the transport of bulky but light cargo. Typical freight includes empty cans, packaging materials, insulation, cabinetry, pharmaceutical vials, and light bulbs. The group's name derives from its principal goal prior to 1983, state laws which provided for 60-foot overall length limit, with no restriction on trailer length. Within the 60-foot overall limit, members commonly operated 53-foot semi-trailers with short tractors. Usage of these vehicles by the group was quite large, the number of 53-foot trailers numbering in the thousands.

As you will recall, Mr. Chairman, the STAA prohibited any state from establishing any overall length limitation on commercial motor vehicles operating in truck-tractor semitrailer combinations. In addition, in that same Act, not only did the Congress impose a minimum single trailer length of 48 feet but also guaranteed, by way of a grandfather clause, that no state could roll back its law pertaining to tractor-semitrailer combinations after December 1, 1982. Therefore, a state which had permitted single trailers of 53 feet (or longer) could not now require 48 feet. Section 411 of STAA is quite clear on these two issues.

We have submitted evidence of lawful operations to FHWA, expecting the grandfather clause to be enforced as it was written; however, the Federal Highway Administration, in its Notice of Proposed Rulemaking of March 1, 1985 not only is suggesting allowing the states to set an overall tractor/semitrailer limit (in direct violation of the law) but has not accepted the clear evidence submitted that justifies operation of a designated trailer length in many states.

In proving the grandfathered length, we have provided at least one shipping document showing operation of a particular tractor/semitrailer combination, with documents showing the specifications for the tractor and semitrailer and the overall length in combination. Should there be any questions as to a particular state, the 60 NR Committee is prepared to research and find additional evidence of lawful operations in that state. In any cases, the particular equipment operated is still available and can be made available for inspection.

In 32 states, the 60 NR Committee agrees with FHWA on the grandfathered lengths. However, in 18 very important states, there are disagreements between FHWA's listed lengths and those which have been documented by the 60 NR Committee. A list of these states and the differences is attached.

Under the STAA grandfathered semitrailer lengths in each state are a matter of factual determination under the law. The STAA only requires that there was an "actual" and "lawful" operation of the length semitrailer which is to be the subject of grandfathering. The present Notice of Proposed Rulemaking from the FHWA does not fully or properly accomplish that purpose.

The 60 NR Committee and the FHWA disagree on another important point regarding grandfathered rights. This deals with permits. In a number of states, general permits are issued to operators for longer vehicles. These permits are not special single-trip permits to handle unusual situations, but are principally a revenue-raising device or a means of entrusting technically qualified agencies with decision power on size limits. FHWA's proposal would hold that there are no grandfathered rights for these vehicles. This is contrary to the language of the STAA and to Senate Report language which specifically dealt with permits by stating:

"Most state laws setting truck length limitations also provide for larger trucks and trailers under special circumstances on an annual permit basis. This provision in the bill simply requires States to continue to allow such vehicles under at least the same ground rules as were in effect on December 1, 1981."

Another area which concerns the 60 NR Committee in the FHWA Notice #85-16 is the limitation of grandfathered vehicles and the no overall length clause to designated highways. The STAA, however, does not provide the Secretary power to designate highways for grandfathered vehicles.

Prior to enactment of the STAA, members of the 60 NR Committee could take their semitrailers on federal, state, and almost all country roads. However, the confusion resulting from the passage of the STAA has resulted in court actions in at least two states in an attempt to clarify the law relating to access. Generally it is felt that the STAA prohibits a state from establishing overall length limitations on all roads, not just highways designated by the FHWA. In addition, it seems clear that the statutory language of the STAA would allow grandfathered lengths on all roads.

In conclusion, Mr. Chairman, the 60 NR Committee does not come before you today seeking new legislation. In supporting the STAA in 1982, the members of our group reluctantly agreed to higher user fees in return for increased productivity gains. We ask now that the Congress enforce the words which were so carefully drawn by insisting that the Federal Highway Administration carry out the law on the grandfather clause and on access for truck-tractor semitrailer combinations.

Thank you.

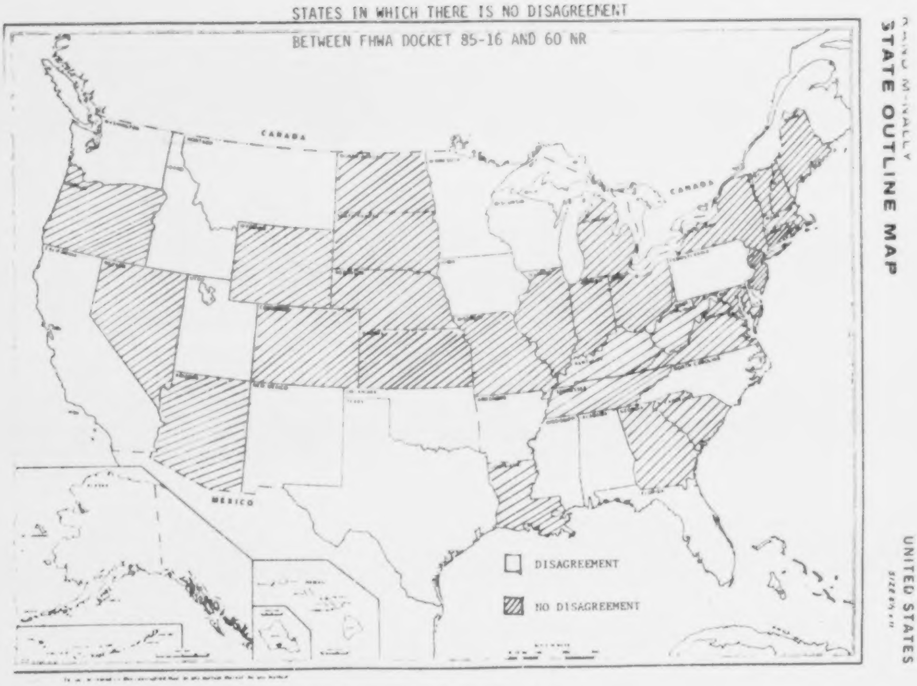
LIST OF STATES IN WHICH THERE IS A DISAGREEMENT BETWEEN FHWA'S LISTED LENGTHS AND 60NR'S

	State	FHWA	60NR
1	Alabama [1]	48	53.5
2	Arkansas	48	57.5
3	California [2]	48	53
4	Delaware	48	53
5	Florida	48	57.5
6	Idaho [2]	53	57.33
7	Iowa	48	53
8	Minnesota	48	53
9	Mississippi [1]	50	53.5
10	Montana [2]	48	57.33
11	North Carolina [1]	48	49.5
12	New Mexico [1]	57.5	59
13	Oklahoma [1]	53	59
14	Pennsylvania	48	53
15	Texas [1]	57	59
16	Utah	48	55
17	Washington [2]	48	57.33
18	Wisconsin	48	53

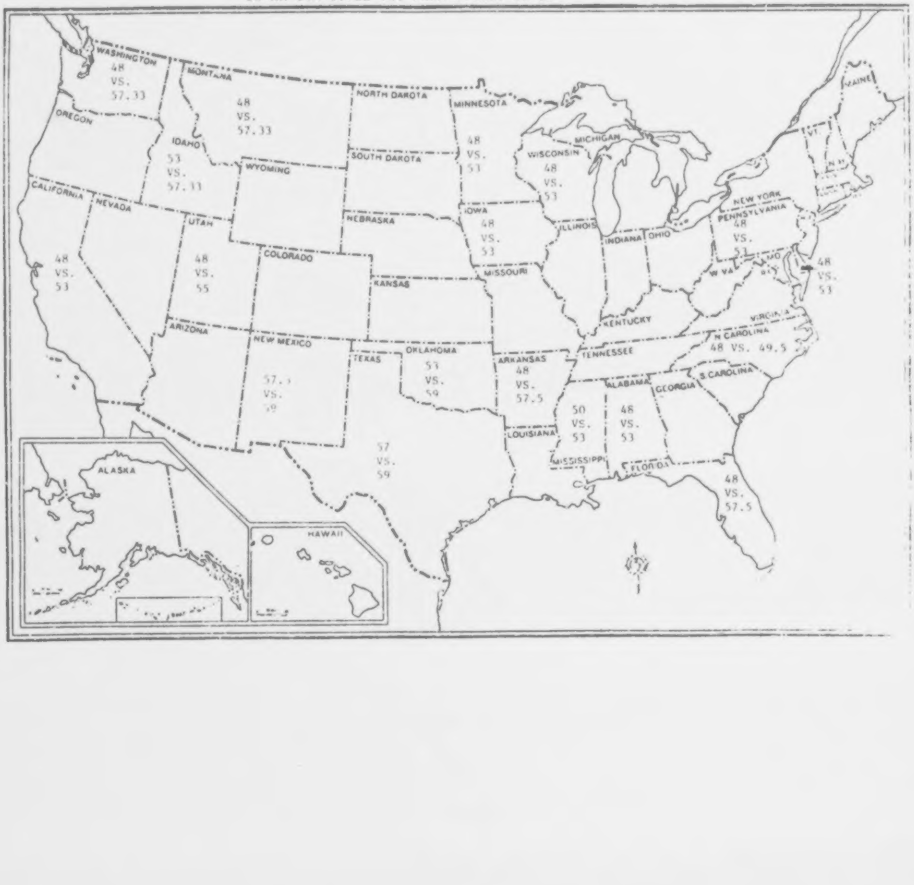
[1] Minor variance from original filing.

[2] Additional or supplementary filing anticipated.

STATES IN WHICH THERE IS NO DISAGREEMENT BETWEEN FHWA DOCKET 85-16 AND 60 NR



60 NR COMMITTEE VS. FHWA DOCKET 85-16



QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony you advocate broader access for the large trucks authorized for nationwide use by the Surface Transportation Assistance Act of 1982. On September 20, however, the Subcommittee heard testimony from the American Automobile Association about potential negative safety impacts resulting from increased use of large trucks. What is your opinion of this view?

Answer. Due to the extensive use of longer single trailers in some parts of the country prior to enactment of the STAA, the experience of the users has been that these longer vehicles are no more accident prone than conventional vehicles. In addition, the effect of using longer trailers with light and bulky freight means an actual reduction in vehicle miles and, thus, improved highway safety.

Question. You noted that your group has presented documentation to the Federal Highway Administration with respect to the appropriate lengths of vehicles to be "grandfathered" in for use in various states but that disagreements exist. How extensive is the documentation for your case?

Answer. Evidence has been submitted to the Department of Transportation documenting grandfathered trailers in most of the disputed states. Enclosed is the 60 NR Committee's response to FHWA Docket 85-16 and the appendix we submitted containing our grandfathering evidence.[1]

Senator PACKWOOD. Thank you, sir.

Mr. Delaney, I sometimes wonder how the American Trucking Association holds itself together with its diverse views between its common carrier conference and its private carrier conference. The contract carrier conference, does that still exist or not within the ATA?

Mr. DELANEY. The ATA now comprises 12 conferences, Mr. Chairman. The contract carrier conference has been combined into an interstate carrier conference.

Senator PACKWOOD. Well, we pretty much deregulated the contract carriers, so they have reason to be satisfied with their lot.

Mr. Donohue said if we go another 3 years, we are going to be down to seven major carriers. Now, obviously some of you at this table are going to be gone if that happens. I do not know if it is going to be you or Mr. Imperatore or Mr. Johnston's members or what-not.

You do not, obviously, fear deregulation. You do not think the private carriers are going to disappear and be gobbled up by seven monoliths, do you?

Mr. DELANEY. That is not physically or financially possible. The private carrier segment is larger.

I think what we may be referring to is some degree of concentration which is occurring in the less than truckload industry, which in fact has not grown at all. The industry has been stable since about 1980 to 1984, around $25 billion, which includes United Parcel within it.

Now, we know that industrial production has gone up and we know retail sales have gone up, and we know carriers have gone out of business. There is a very long litany of them. But we also know that if we look at our shelves in our supermarkets and our drugstores, we happen to see merchandise there. It did not swing into the economy on a vine.

Private carriers are bringing it in. Other forms are combining. We have regional operations linked up with piggyback service.

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[1] Retained in committee files.

One thing that the legislation assures is that a remedy will be found. Private carriers in fact have always been the remedy of last resort anyway whenever regulated for-hire traffic became unaffordable. Now that it is becoming more efficient, all of us are at it.

If you take something like the National Small Shippers Council and the pharmaceutical industry, it is possible for a company such as mine or Ryder or anybody else to focus a service on that specific industry and meet those specific needs. So there will be no ability here for people to have much abuse, but there will always be someone around looking for the need, to carve that out, and to provide some efficiency to it.

I think the problem is we are looking at the bygone area. Prior to 1980, we had all of these common law definitions: irregular, regular, common, contract. Two kind of carriers today, public and private, and the private has shipper-affiliated operations, which you permitted to make them more efficient. That is what we have. That is a system that has worked well.

Senator PACKWOOD. Mr. Johnston, you do not seem to be worried. Your group is kind of a hardy breed, and yet you are willing to go toe to toe with these gigantic companies in a deregulated atmosphere.

Mr. JOHNSTON. Well, our people would be around regardless of what happens, because they are small business and small business is the most flexible. I think we will lose some of the franchise holders who have been able to insert themselves into the middle of this arrangement and to gather most of the profit off the top.

Senator PACKWOOD. Would you like to comment on the allegation that has been made from time to time that it is the independent drivers—sort of an allegation of fly by night, irresponsible, underinsured—who are unsafe and should not be on the highway? That is sort of the tenor of the allegations.

Mr. JOHNSTON. The average age of our membership is 45 years old, and the average amount of time in the business is about—I think it is running now about 9 years. I think that is pretty typical overall of the average number of owner-operators now in the business.

In regard to safety on the highways, you know, people might go out and throw garbage out in their neighbor's yard, but they are not going to throw it in their own yard. Our people live on the highways. That is literally where they live, and they have more at stake in safety than any other segment of the population. That is where they live and work.

If it is unsafe out there, they get killed, and so their interest is in maintaining their equipment and keeping themselves and other people around them safe.

Senator PACKWOOD. Let me ask the two of you gentlemen, you have distinguished companies, old companies, family companies, that I assume have been profitable over the years, and you both employ a fair number of people. If we move to deregulation, what is going to happen to your companies? Will you be able to compete in a deregulated atmosphere, and your fear for deregulation is not for you but for the public? Or is deregulation a threat to your continued existence?

Mr. Imperatore. Mr. Chairman, if I may answer. Our company has responded in the past 5 years and maintained a high level of profitability, and it has been No. 1 and still is. We have changed with the time.

The fact is, however, we have lost density. Our costs are much higher to produce the service that we had produced in a more efficient manner. We had been and are probably yet today the most efficient small shipments carrier in the country.

The problem is, as has been stated, there has been such a skimming. First of all, the level of freight volume has reduced in the United States, in spite of the growth of some of these indices. The imports, you referred to that earlier.

Our basic work force is built of very highly skilled and trained people. The industry is very volume sensitive, and you take in the instance of United Parcel, the U.S. Postal Service; those are two of the best examples of this principle of density, concentration of workload.

Senator Packwood. Let me ask you this question. You are a smart operator. You have done well in a very tough business. If we went to a totally deregulated environment except for safety and insurance, would your company make it?

Mr. Imperatore. I am not sure we would survive in our present form. I think we would and we are experiencing very severe difficulties in maintaining our costs, and our costs are escalating far in excess of the rate of inflation. That is a widespread phenomenon in our industry.

Senator Packwood. Mr. Churchill.

Mr. Churchill. I would have to respond in this way: I do not think we are going to be run out of business. However, I think that, in view of the fact that we still handle a lot of joint line traffic, that we continue to need the antitrust immunity in order to be able to make joint line rates. And without that, the chances are that 20 percent of our business is going to go away.

Now, that will hurt us. We have been able to maintain some growth in our company since 1980 because of the fact that we had the resources to expand into other areas. We happen to be one of those carriers that expanded our operating area.

Senator Packwood. Could you expand? Could you thrive? Could you compete? Could you make a profit in a deregulated atmosphere?

Mr. Churchill. I think that is kind of a loaded question. I think you have got to concern yourself with the traffic you are handling and whether or not you are going to be able to continue to handle the joint line traffic without being subject to prosecution for violation of the antitrust laws.

Senator Packwood I will ask it once more. Assuming we get rid of the antitrust immunity for the joint lines and assuming we deregulate everything, you are going to be in a free market economy except for perhaps safety and insurance and cargo liability and a few things we choose to keep. Could you compete in that atmosphere? Could you make a profit in that atmosphere?

Mr. Churchill. I am not sure that we could.

Senator Packwood. Senator Exon.

Senator Exon. Mr. Chairman, thank you very much.

Gentlemen, it has been a very interesting discussion and I have listened with keen interest to the differing points of view.

Mr. Hardman, I just want to clear up one thing. Do you and your committee support or are you against further deregulation?

Mr. **Hardman**. We have not taken a position on it. That is not one of our items of discussion.

Senator **Exon**. I take if from your testimony, then, that you would like some stabilization of the length of trucks on the highways. Is that the main thrust that you are trying to get at?

Mr. **Hardman**. My purpose here today was to basically inform you of what our experience has been subsequent to the passage of the STAA and some of the major issues that we feel are being experienced because the administrative agency is not administering the law the way that we felt you intended it.

Senator **Exon**. It has been a long process. I remember back when I was Governor of Nebraska we had this situation of the length of trucks, and they would come in from Colorado or Wyoming and they would go across Nebraska, and then they would get to some of our neighbors on the East and then they had to divert around some States.

I mean, it has always been a perplexing thing to me, not being an expert on this. But certainly, the safety standards on our highways, the interstate system, were supposed to be basically all of the same, and I have always felt that it would have expedited the interests of the public if we—and I do not know what the length of trucks should be from a safety standpoint and where the potential damage is to the roadway.

But what you are telling me is that that remains a problem that has not been solved, is that right?

Mr. **Hardman**. That is correct. When we were involved in the legislation, we thought that the STAA was going to resolve that question, and the safety issue and standardization issues and so forth were considered in detail. And we felt that the issue has been resolved. But apparently it has not, at least in the minds of the FHWA.

Senator **Exon**. Do you have a personal opinion on whether you wish to continue to escalate deregulation?

Mr. **Hardman**. Well, I am personally employed by a truck line who has been able to withstand the problems of deregulation and actually take advantage of them, and they have had substantial growth during the period involved.

Senator **Exon**. Given that situation, I would just like to ask you two gentlemen who have testified against further deregulation to answer the point that I thought Mr. Johnston, I believe, made that with all the difficulties, the shelves of the supermarket are full, the job is getting done? Could I ask you to respond to that?

You have to admit that is a fact. I think we all know the freight is being delivered. Is it your position that with further escalation of deregulation we are likely to see in the longer term less competition in the trucking industry and that those shelves might remain full, but there could be a considerably higher cost if we continue with deregulation. I take it that you are saying that in the long term. Deregulation is going to exacerbate those costs, because of the lack of competition? What is your answer?

Mr. **Imperatore**. Senator Exon, I would like to answer this. I think it is a piece of mythology that private carriage was regulated. In my 39 almost years, all of the easy freight that could be handled by companies running their own trucks was handled by those operators who wished to be in that business, and I am talking about a chemical company, a company in building materials, if they felt they wished to be in the business they were, and there was no regulation except safety and other requirements.

The fact is is that the common carrier industry has always been left with the leavings. We do the toughest work. We handle, as Mr. Churchill spoke of, the little towns in Missouri and in New Jersey and in Maine and New Hampshire and so on around the country. We are a system. We are part of a system. This country ostensibly needs a system of surface transport, and it will be operated by trucking people.

It is interesting that this gentleman from Leaseway testifies in behalf of deregulation. Their company, as I understand, was the only major transportation company heretofore, before 1980, which had operated as contract carriers and had provided many other transportation services, but not, as I understand, general commodities motor freight common carriage.

They were the only company that entered our field, the freight industry field, on a major basis, and they withdrew from the field. What is happening in the United States is that you have escalation in the cost of doing business, and there is a cross-subsidy at work.

Major companies that have the clout, and we are asked at times to quote, for instance, quote to a major shipper or a major receiver of goods, a major major, companies going into the billions, and they predicate their demand, a demand for a response to a quotation.

Now, obviously, we in our company have the right to respond or not to. We have chosen not to. But the discount is over 50 percent of the established class rates. Now, that has to be below cost. It has to be. And so the bigger companies are taking advantage of the smaller companies in the country. You have a cross-subsidy.

The smaller shippers in the United States are paying for the economic power of negotiation by the big carriers. Somebody has got to support a system, and that is really what is at stake, and it is a question of how much it is going to cost and who is going to pay for the support of that system.

Senator **Exon**. Mr. Chairman, my time is up. I think in the interest of fairness could we allow 2 minutes for the other side to respond to this?

Senator **Packwood**. Mr. Delaney, go right ahead.

Mr. **Delaney**. Thank you. I operated private carriage for 12 years and 30 industries. Then the growth of private carriage occurred as a result of the relationship between the regular common carrier conference and the teamsters. The fact of the matter is that we had rate increases, wage increases in the LTL sector, and that is one of the problems that Mr. Imperatore is living with. We had wage increases three times the rate of manufacturing employment and four times the rate of inflation for a period of 15 years in the national freight agreement.

With respect to Leaseway Express, we entered that business in 1982 as a lane specialist with a new concept in pricing. We failed to understand the overcapacity that was in the industry. It was kind of funny. We invented overcapacity on July 2, 1980. It was always there. No one knew how deep it was. The problem we found was that we thought break even would be $35 million.

After I joined the company I discovered it was going to be $85 million, and take probably until 1988 until we had any black pennies in it. The substantive answer is, you fish or cut bait, and I cut bait. The rest of the company did as well.

The last point I think that has come up this morning from the teamsters' disclosure was a comment about Professor Weikopf's study that had a relationship between antitrust immunity and safety. Unfortunately, Professor Weikopf died about a year ago, and it is not happy to recount a story about a person who is no longer able to be present to speak.

But the fact of the matter is, in 1979, when he testified to that point before President Carter's commission that reviewed the antitrust immunity process, whether it had any viability to it, his testimony was impeached by Commissioner Fox, my recollection is, somewhere about September 1979, and I ask that that be taken into account, Mr. Chairman, among the other things that will follow about setting the record straight.

Senator EXON. Thank you, gentlemen.

Senator PACKWOOD. Thank you, gentlemen, very much.

Now, if we might take Senator Meiklejohn from Colorado, Mr. Eric Rasmussen, Mr. Robert Davis, Mr. Edward Paull, and Mr. James Leach.

Senator EXON. Mr. Chairman, while the witnesses are being seated, I want to welcome my friend from Nebraska, Mr. Eric Rasmussen. He is a long-term member of what we used to call the Railway Commission, and now we call it the Public Service Commission. I was worried that you might not be able to get here because of the storm, and I am looking forward very much to your testimony, and I will probably have some questions. So, welcome. We are glad to have you, Eric.

Senator PACKWOOD. Senator, why do you not start?

STATEMENTS OF AL MEIKLEJOHN, COLORADO STATE SENATOR; ERIC RASMUSSEN, VICE CHAIR, COMMITTEE ON TRANSPORTATION, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY KAREN HOCHSTEIN, DIRECTOR OF CONGRESSIONAL RELATIONS; ROBERT E. DAVIS, TRANSPORTATION COST CONTROL; EDWARD S. PAULL, TRAFFIC MANAGER, PRECISION STEEL WAREHOUSE, INC.; AND JAMES LEACH, CHAIRMAN, SMALL SHIPMENTS TRAFFIC COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Mr. MEIKLEJOHN. Thank you. First, just let me thank you so much for permitting me to express my views. Mr. Chairman, Colorado is a State which is extremely dependent upon a good system of motor common carriage. Its principal city, Denver, is approximately 600 miles distant in any direction to the next major commercial center.

More importantly, the State has approximately 1,100 separate communities scattered across its vast distances. Ninety percent of the State's population and industry are concentrated into a narrow strip lying 25 miles on either side of Interstate 25 and running a distance of about 170 miles north and south. Those people are very important to us. I will try to summarize. I know time is short.

It is my view, sir, that further deregulation of the motor carrier industry at this time is not in accord with my view of the requirements of the public interest in a State as vast and with a population as sparse as the State of Colorado.

Let me express my concerns under three general topics. First, the impact on small shippers and small towns. Second, the impacts on safety. And last, the effect on the industry. And if I have enough time, I will talk about preemption, which is pretty dear to my heart.

There is growing evidence that deregulation does not serve the interest of small shippers in small towns. There is evidence that in a deregulated scheme large shippers can and probably do obtain very favorable rates and charges, probably below cost, and that competition will stabilize and perhaps even reduce rates between major shipping complexes.

The situation with small shippers and small towns is to the contrary. It begins to appear that both small shippers and small towns will face increasing freight costs in a deregulated environment, and at least to some extent service interruptions.

Since the Bus Deregulation Act of 1982, the inter and intrastate bus companies serving the State of Colorado have abandoned service or are in the process of abandoning service to 62 points. Some of these are not wide spots in the road. They are points of importance to the State. These would include the cities of Leadville, Climax, Mettern, Ponca Springs, Castle Rock, Fountain, Watkins, and Jewelsburg.

This and other evidence suggests that small towns and small shippers can expect in a deregulated trucking environment that their charges will go up, that service will be reduced and in some instances eliminated.

Moreover, these increases in charges cannot always be justified on pure cost considerations. Quite to the contrary, small towns and small shippers have little or no market power. Thus while competition intensifies for the traffic between large points and for big shippers, these reductions and discounts must be made up somewhere.

The people who pay the price are the small shippers in the small towns. The carrier has to make it somewhere. Discounting, which generally favors large shippers, is further evidence of the problem. At my request, the Rocky Mountain Tariff Bureau has shown me studies which have been made of discounting practices as to traffic subject to that bureau's continuing traffic study.

Approximately 60 percent of the bills from that bureau show some kind of a discount, sometimes exceeding 50 percent. On service which is joint lined, generally small town service, only 40 percent of the bills show discounts. This demonstrates two things to me. First, that discounts of this magnitude cannot be justified on cost considerations, and second, the small shipper and the small town may not even be aware of the full extent of the discrimination being practiced against it.

Referring to safety, there are those who argue that safety is not a proper consideration in connection with economic regulation. I totally disagree. Those persons would also argue that there is no necessary correlation between regulation of rates and revenue levels and safety records. I disagree with that premise also.

While it may be difficult to demonstrate cause and effect, it is a fact that there are studies and data now to indicate that where there has been substantial rate deregulation, trucking safety has also deteriorated.

There is mounting evidence that deteriorating financial condition of motor carriers leads to reduction in maintenance expenses. Maintenance can be postponed or delayed, but the cost of fuel and the driver's wages cannot. This is a place where cash flow can be somewhat controlled.

In this regard, I ask you to look at the experience which has been taking place in the States of Arizona and California, where trucking safety has markedly deteriorated at the same time that there has been a complete deregulation or substantial rate deregulation.

The age of the vehicles lengthens, again casting doubt on the safety of the equipment. In the hearings which I held in my own committee this summer, the chief of our highway patrol has reported a 10-percent increase in fatalities. It is a matter of real concern. To me it is impossible to argue that carrier financial health has no bearing on safety. The industry is much too large and too diverse to police. Neither Federal nor State governments can have sufficient inspectors to ensure the soundness of the Nation's trucking fleet.

Turning to the industry, the evidence is persuasive to me that carrier financial health deteriorates with deregulation, and that the industry tends to concentrate in a regular route industry which is so essential to small towns and small shippers. There appears to be a movement in the direction of disinvestment. This is decidedly not in the public interest.

The turnover in the industry is becoming alarming. The growing and substantial numbers of persons entering and leaving the industry should be a cause for real concern. It seems to me we are coming down to a place where we are going to have the 10 largest companies with high turnover among 1 and 2 truck operators.

Lastly, permit me to say a few things about preemption. Each State in this great Nation has unique and individual problems. Preemption prevents State authorities from reacting to the problems in the interest of the State as they see it. It was hoped that the New Federalism was going to result in a national government attending to those affairs uniquely national, the province of the Nation, and leaving State and local governments to tend to the affairs entrusted to them.

Lamentably this has not happened. I do appreciate very much the opportunity, Mr. Chairman, of being here, and thanks so much for hearing my remarks.

[The following information was subsequently received for the record:]

SENATE CHAMBER,
STATE OF COLORADO,
Denver, November 12, 1985.

MS. KAREN BORLAUG PHILLIPS,
Surface Transportation Subcommittee Staff, U.S. Senate, Committee on Commerce, Science and Transportation, Washington, DC.

DEAR MS. PHILLIPS: I have Senator Packwood's letter propounding certain additional questions relating to regulation of motor carriers of property. Let me answer them as follows:

Question. In your testimony you noted that due to the state preemption in the Bus Regulatory Reform Act of 1982, some communities in Colorado have lost bus service. What has been Colorado's experience to date with *trucking* service to small communities?

Answer. The state of Colorado imposes conventional regulatory requirements on its intrastate motor carriers of property. Most, if not all, of the state's regular route motor carriers of property have both intrastate and intersate operating rights. As a consequence there does not appear to be service discontinuances and interruptions as have occurred in other states where the state has also deregulated (notably Wisconsin). Lack of market power, discounting practices and reduced productivity in interstate commerce have affected small communities and small shippers. It is undeniable that the average interstates rate level to small towns and small communities is higher than for service over the same distance between major points.

Question. To what extent does state regulation ensure continued small community service?

Answer. As indicated the Colorado intrastate regular route network carriers generally perform service in both intrastate and interstate commerce. Service discontinuance in intrastate commerce requires prior Public Utilities Commission approval. Accordingly, the regular route carriers within Colorado are going to serve these points in intrastate commerce anyway. They therefore provide joint-line service out of the distribution centers on interstate commerce. The fact that Colorado continues to regulate its intrastate motor carriers of property stabilizes what could otherwise be a bad situation in interstate commerce.[1] Colorado is not able to do this with bus service.

Question If a given community is unprofitable for a trucking company to serve, should that carrier be required to provide that service at a loss?

Answer. Cost-finding in the motor carrier industry is an extremely sophisticiated exercise. Accordingly, it may be a little difficult to tell whether or not a particular service makes a contribution to the overall system overhead and return. the whole system or route must be profitable. With entry controls this generally can be accomplished. But the hypothesis in the question is somewhat faulty. Today in interstate commerce small shippers and small towns are subsidizing large shippers who are able to negotiate substantial discounts. In most instances these discounts are so sizeable (up to 60 percent) that they must reduce the revenue to a level which is far below any reasonable semblance of variable cost. This results in dramatic discriminations against both small shippers and small towns. Considering the crucial importance of motor carrier transportation to the state of Colorado, it would appear that in the absence of special justification all shippers and communities should be treated equitably. If they aren't the population will have to concentrate in big towns and cities. This view will result in some traffic being more profitable than other traffic.

Question. You stated your opposition in your testimony to any federal legislative proposals which would preempt state authority over interstate trucking operations. In what specific ways do state economic regulations over the trucking industry benefit the public?

Answer. (a) Let me correct a misimpression which I have apparently left. I no not contend that states should be allowed to subject interstate commerce to economic regulation. My objection is to federal preemption of state economic regulation of intrastate commerce and unnecessary preemption of state police power and taxing authority.

(b) It provides regular, dependable intrastate service (generally overnight) at reasonable rates and charges without discrimination against small towns and small shippers. This service is available to almost all of 1,100 points throughout this state. This includes a requirement that the regular route network must perform jointline service on single factor rates.

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[1] See the rather well documented situation in Wisconsin.

(c) By preventing an oversupply of transportation service, the authorized carriers are able to obtain higher levels of productivity, and therefore incur lower unit costs. This is passed on to the public in generally lower rates. This stabilized service is performed on a regular and dependable basis without radical influence from traffic dilution caused by new entrants. In the unregulated environment, these new entrants are in and out of the market with great rapidity.

(d) A financially stable and safe transportation system is assured on a rational and nondiscriminatory rate structure. This permits shippers and receivers to know that the service will be available day after day at the same price. Responsibility for the performance of this service is fixed and determinable. There is a place to complain if something goes wrong (the Public Utilities Commission).

(e) This type of a transportation system enables the citizens in small towns and communities to have at least a chance at economic success. They are not victimized by the discounts given their larger competitors. These people know that their freight will get to them expeditiously and safely. The entire state is linked together by this transportation network. Given the vast distances involved and the sprawled-out demography of our state, this is vitally important. It should not be necessary that everyone be a big shipper and live in the cities and the big towns.

Thank you for the opportunity to further respond to your concerns.

Cordially yours,

AL MEIKLEJOHN,
Colorado State Senator.

Senator PACKWOOD. Thank you, Senator.

Mr. Rasmussen.

Mr. RASMUSSEN. Mr. Chairman and distinguished members of the subcommittee, my name is Eric Rasmussen, and I am commissioner with the Nebraska Public Service Commission and vice chairman of the NARUC Committee on Transportation.

I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as NARUC. Accompanying me today is Karen Hochstein, director of congressional relations.

I have filed my testimony with you, and so therefore I will try to address the things that concern us most today. The NARUC is pleased to testify today concerning some of the many issues surrounding the possible economic deregulation of the interstate for hire trucking industry.

As representatives of the State regulators of intrastate motor carrier operations, we hope to provide the members of the subcommittee with our views on three such issues: First, the need for the Federal Government and the States to ensure safe and financially responsible motor carrier operations in a deregulated environment; second, the question of Federal preemption of State economic regulation of intrastate motor carriers; and third, the Federal role in promoting the uniform State procedures and policies concerning motor carrier registration and taxation.

At this time I would like to address the preemption issue. The NARUC strongly opposes any Federal legislation that would preempt either the ability of the States to economically regulate intrastate motor carrier transportation or restrict the current State powers to police interstate carriers.

Therefore, we strongly oppose the preemptive provisions of the administration's proposal as contained in section 61 of that bill.

The proposed subsection 11501(g)(1) would seem unobjectionable. States would not be permitted to economically regulate interstate commerce. The section-by-section analysis accompanying the bill, however, documents the sweeping preemption the authors actually intend.

Under this subsection, the States could not act to protect their citizens by removing unsafe truckers from the highways. This legislation thus understood is a shocking restriction upon the police powers of the States.

We frankly cannot believe that this administration, committed as it is supposedly to the philosophy of government based on the principle of federalism and respect for the ability of States and local governments to manage their own affairs, would force the States to sit idly by while known safety violations are permitted to operate freely over their highways.

In the strongest terms, we urge that Congress not enact legislation such as this. Under the commerce clause of the Constitution, Federal courts can ensure that States do not impose undue burdens on interstate commerce without Draconian preemptive solutions such as this legislation.

We also object to the provision of section 61 of the administration's bill which would direct the Secretary of Transportation to conduct a 2-year study of intrastate economic regulation in order to ferret out burdens on interstate commerce.

Again, we are surprised that this administration with its eagerness to return power and authority to the States would recommend such a study. We urge that the entire idea of conducting the study be dropped for two fundamental reasons. First, the study would be a waste of time and resources. Intrastate economic regulation is a well known and understood fact in this industry. Indeed, as recently as 1983, in the so-called section 19 report, the ICC and the DOT studied this very subject, and reported to Congress.

Second, we believe that the intent of this provision is actually to seek total preemption and forced deregulation of intrastate motor carrier operations. We strongly oppose such preemption and forced deregulation. It should be the decision of the State legislators, Governors, and regulators as to whether regulation is abolished in any specific State, not by Federal mandate.

This is the way the Federal system supported by this administration is supposed to work. The decisions of local concerns such as whether intrastate motor carrier service should be regulated should be made by local officials who are familiar with the needs and conditions of the States in which they live. As an analogy, I would like to point to the instances of deregulation with the communications industry.

The breakup of AT&T was unfortunate in my opinion. The country was left in a considerable amount of chaos. With increased deregulation of the phone industry, we have people today wondering what happened, and they are still struggling to find out where their bills are coming from and so forth.

We in the State industry catch all of the wrath of the individuals. This is a vast difference between State regulation and State and national regulation. It is that the national, whether it is communications or whether it is the trucking industry, their responsibility in my opinion is to move commodities, whether it is voices or whether it is trucking, or commodities in general.

We think that we have to deal more with individuals, and we have the problems with the States at hand. We would respectfully request that section 61 of the administration bill and similar provisions in any other legislation which may surface be deleted. States must remain free to regulate, if they so choose, the rates and services of the movements of goods between points within their borders.

Senator PACKWOOD. I have to ask you to conclude, Mr. Rasmussen.

Mr. RASMUSSEN. I would like to just point out one thing, that Florida has been held up as a flag State here all through the day. I think all commodities, a very, very large percentage of commodities in Florida either originate or terminate in Florida, and that is not the case in Nebraska.

We are strictly a bridge State, where commodities flow both ways through our State, and that is a Great Plains problem, and I would like to point that particular point out.

Thank you.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Eric Rasmussen and I am a commissioner with the Nebraska Public Service Commission and Vice Chair of the NARUC Committee on Transportation. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today from the NARUC is Karen L. Hochstein, Director of Congressional Relations and Phyllis B. Levine, Assistant Director of Congressional Relations.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America.

The NARUC is pleased to testify today concerning some of the many issues surrounding the possible economic deregulation of the interstate, for-hire trucking industry. From our perspective as the respresentative of the State regulators of intrastate motor carrier operations, we hope to provide the members of the Subcommittee with our views on three such issues: (1) the need for the Federal government and the States to ensure safe and financially responsible motor carrier operations in a deregulated environment; (2) the question of Federal preemption of State economic regulation of intrastate motor carriers; and (3) the Federal role in promoting uniform State procedures and policies concerning motor carrier registration and taxation.

FEDERAL/STATE PARTNERSHIP TO ENFORCE SAFE AND RESPONSIBLE SERVICE

Under most proposals for the economic deregulation of interstate motor carriage (including the bill proposed by Secretary Dole), legislation would be enacted to take the Interstate Commerce Commission (ICC or the Commission) out of the trucking business. The Commission's current jurisdiction to regulate carrier entry through the issuance of operating authority, to require the filing of tariffs, and to provide antitrust immunity for rate bureau activities would be repealed. We have seen no "deregulation" proposals, however, which would repeal the Federal government's responsibility to ensure that interstate motor carriers operate in a safe, financially responsible manner. Given the increasing publicity given to the issue of unsafe carrier operations, whether here on the Capital Beltway or in my State of Nebraska, we would fully expect the Federal government to continue and improve its safety efforts regardless of the deregulation debate. Indeed, economic deregulation may require an even greater need for effective safety and insurance enforcement as increased competition (the goal of the deregulation advocates) leads carriers to place greater emphasis on profitability than on safety.

Therefore, the NARUC proposes that in the event economic deregulation occurs, Congress should enact legislation which requires each motor carrier operating in interstate commerce to obtain a "Federal Fitness Certificate" from the U.S. Department of Transportation before the carrier's trucks are put on the road. We do not envision this requirement to be any sort of barrier to entry, but rather, a simple procedure whereby all interstate carriers would provide assurance that they have legally required insurance coverage, agents for the service of legal process in each State in which they intend to operate, and an understanding of Federal safety laws as evidenced by a sworn affidavit acknowledging a carrier's intention to conduct its operations in compliance with all applicable Federal and State safety laws and regulations. Once an individual carrier has provided these three pieces of information (proof of insurance, designation of process agents and safety compliance affidavit) the U.S. Department of Transportation (DOT) would routinely issue the Federal Fitness Certificate to the carrier who could then begin operations.

We believe that a Fitness Certificate program would be attractive for a number of reasons. First, prior to the commencement of carrier operations, the DOT would be able to ensure that each interstate carrier was insured, understood lawful safety requirements, and stated under oath its intention to comply.

Secondly, the Federal Fitness Certificate would provide an important tool to State and Federal enforcement efforts once carrier operations have begun. We propose that in the event of deregulation, current legislation, which requires carriers to register ICC operating authority with the States, be revised to permit the States to require the registration of Federal Fitness Certificates. Under this proposal, 49 U.S.C. sec. 11506 would be revised to permit willing States to require carriers (or their insurance companies) to file three pieces of information before conducting operations within their respective borders: (1) a copy of the carrier's Federal Fitness Certificate; (2) proof of insurance (using uniform forms now available as described in 49 C.F.R. Part 1023, App.); and (3) designation of the in-State agent for process.

This proposal is not intended as a barrier to entry, but rather, as a means to enlist the States in the important effort of enforcing safe and fincancially responsible operations. We believe this proposal is attractive to both State and Federal governmental agencies for at least three reasons.

First, from the Federal perspective, this proposal would enable the U.S. DOT to improve motor carrier safety enforcement activities without the expenditure of scarce Federal funds. The registration fees collected by the States would provide an important source of funding for State safety enforcement activities. In this way, the States would be able to put more officers on the road to enforce both State and Federal Safety laws at minimal cost to either State or Federal treasuries. In essence, the fees collected by the States for the registration of Federal Fitness Certificates would constitute a user fee payable by the carriers.

Second, because our proposal would build upon the current registration established under 49 U.S.C. sec. 11506, it could be implemented quickly and smoothly. States and carriers are now quite familiar with the current registration system, which would require minimal modification under this proposal. For example, the current insurance forms could be used without substantial change, as could the current registration forms, cab cards, and State identifiers. Moreover, the NARUC currently has under consideration a proposal to centralize the administration of this registration program so that carriers could register and renew their registration in all participating States through a single filing rather than the current State-by-State system. In short, we strongly believe that the current registration system established under an Act of Congress is well-positioned to provide important benefits to State enforcement of motor carrier safety and financial responsibility.

Third, and most importantly, our proposal would, we believe, serve the interest of the public by removing unsafe and uninsured carriers from the Nation's highways. Under our proposal, State enforcement officers would be notified quickly and conveniently of insurance cancellations or lapses, enabling them to remove uninsured vehicles from the highways. Similarly, the Federal Fitness Certificate of a carrier with a record of chronic safety violations could be revoked by the DOT. This revocation would in turn be transmitted to the State enforcement officers who would take action against the offending carrier.

In sum, we believe that the end of economic regulation should not and must not mark the end of governmental oversight of motor carrier safety and insurance requirements. Indeed, a deregulated industry may require more vigorous enforcement. Just as the Federal Aviation Administration continues to monitor and enforce safe operations of a deregulated air transport industry, the Federal Government, in partnership with the States under the program we have proposed, must ensure the safety of the industry with which we share our highways.

PREEMPTION AND UNIFORMITY

The NARUC strongly opposes any Federal legislation which would preempt either the ability of the States to economically regulate intrastate motor carrier transportation or restrict the current State powers to police interstate carriers. Therefore, we strongly oppose the preemptive provisions of the Administration's proposal as contained in Section 61 of that bill. That section, which would add section 11501(g) to Title 49, U.S. Code, purports to prohibit States from regulating interstate carriers in areas where the ICC now regulates. On its face, proposed subsection 11501(g)(1) would seem unobjectionable—States would not be permitted to economically regulate interstate commerce. The section-by-section analysis accompanying the bill, however, documents the sweeping preemption the authors actually intend. Under this subsection, the States could not act to protect their citizens by removing unsafe truckers from their highways. This legislation, thus understood, is a shocking restriction upon the police powers of the State. We frankly cannot believe that this Administration, committed as it supposedly is to a philosophy of government based on principles of Federalism and respect for the ability of State and local governments to manage their own affairs, would force the States to sit idly by while known safety violations are permitted to operate freely over their highways. In the strongest terms, we urge that Congress not enact legislation such as this. Under the Commerce Clause of the Constitution, Federal courts can ensure that States do not impose undue burdens on interstate commerce without draconian preemptive "solutions" such as this legislation.

We also object to the provision of Section 61 of the Administration's bill which would direct the Secretary of Transportation to conduct a two-year study of intrastate economic regulation in order to ferret out "burdens on interstate commerce." Again we are surprised that this Administration with its eagerness to return power and authority to the States would recommend such a study. We urge that the entire idea of conducting this "study" be dropped for two fundamental reasons. First, the study would be a waste of time and resources. Intrastate economic regulation is a well-known and understood fact in this industry. Indeed, as recently as 1983, in the so-called "Section 19 Report", the ICC and the U.S. DOT studied this very subject and reported to Congress. Secondly, we believe that the intent of this provision is actually to seek total preemption and forced deregulation of intrastate motor carrier operations. We strongly oppose such preemption and forced deregulation. It should be the decision of the State legislatures, governors, and regulators as to whether regulation is abolished in any specific State, not by Federal mandate. This is the way the Federal system, supported by this Administration, is supposed to work. Decisions of local concern, such as whether intrastate motor carrier service should be regulated, should be made by local officials who are familiar with the needs and conditions of the States in which they live.

Therefore, we respectfully request that Section 61 of the Administration's bill, and similar provisions in any other legislation which may surface, be firmly rejected. States must remain free to regulate, if they so choose, the rates and services of the movement of goods between points within their respective borders. This means that State regulation of intrastate transportation by wholly intrastate carriers as well as carriers providing other interstate services must be preserved.

We have also been asked to provide our views on H.R. 3222, a bill to promote uniformity in State taxation and registration procedures. Because our members do not generally exercise jurisdiction in these areas, we take no position on this legislation. However, because the promotion of uniform State regulatory and administrative policies and procedures is one of the fundamental goals of the NARUC, we are pleased to report that a Task Force of our Association is in the process of developing a Model Code for State Regulation of Transportation. Once completed, this Model Code will be transmitted to the States for their use in improving uniformity in the area of bus, truck and rail regulation.

In conclusion, I would like to thank the Subcommittee for the opportunity to appear here today to address these important matters. As the members of Congress consider this and similar legislation, we respectfully urge that the important role played by the States in ensuring safe, financially responsible motor carrier transportation be kept firmly in mind. I and my colleagues in State regulation stand ready to assist the Congress, and the Administration in developing cost-effective, workable, and nonpreemptive solutions to achieve our common goal—safe, efficient and responsible motor carrier service.

Thank you for your attention. I would be pleased to answer any questions you may have.

Questions of Senator Packwood and The Answers

Question. In your testimony, you stated your opposition to any legislation which would preempt or restrict the ability of the states to police interstate carriers.

a. Why do states need to have economic regulatory control over interstate carriers?

b. Who benefits from state economic regulation of interstate carriers? In what specific ways?

Answer. a. States do not need to have economic regulatory control over interstate carriers. Indeed, we have not proposed that the States economically regulate interstate motor carriage. We do, however, strongly object to legislation which would, as DOT's bill purports to do, prohibit the States from exercising their police powers to protect their citizens by removing unsafe truckers from their highways. Given the heightened concern for improving the safety performance of motor carriers, we think it is completely inappropriate for the Federal government, in the name of deregulation, to limit the States ability to deal with unsafe truckers.

b. Again, the NARUC is not advocating State economic regulation of interstate carriers.

Question. In your testimony, you advocated requiring motor carriers to obtain a "Federal Fitness Certificate" before being allowed to commence interstate operations. This certificate also would be registered in the appropriate states, along with proof of insurance and designation of the in-state agent for process.

a. Since carriers would be required to provide proof of insurance, designation of process agents, a safety compliance affidavit in order to receive a "Federal Fitness Certificate," why should carriers be required to again file information on insurance and process agents when they register their certificates with the states?

b. You mentioned that states would collect fees for the registration of these certificates. How high do you envision these fees being?

Answer. a. The States would have the duty of enforcing compliance with the "Federal Fitness Certificate". Therefore, it is necessary that they have the proof of insurance, designation of process agents, and a safety compliance affidavit on file to expedite enforcement. The theory behind the "Federal Fitness Certificte" is to promote uniformity throughout the States but that does not preclude the States from requiring the same information. It is not unduly burdensome on the carriers since they would merely have to duplicate the information. In an era when the Federal government is withdrawing from its enforcement activities, the States, as the primary enforcers, have the right to receive this information as they do now, directly from the carriers without relying on a shrunken Federal bureaucracy to monitor this information on a current and readily available basis.

b. The fees for registration would remain the same as under the current program established under 49 U.S.C. Sec. 11505. 49 C.F.R. Secs. 1023.13, 1023.33.

Question. The private carriage segment of the motor carrier industry testified recently before this Subcommittee that many states have not been as liberal as the federal government in amending regulations and policies to make private fleets more productive. For example, according to the Private Truck Council of America, 35 states do not allow private carriers to engage in compensated intercorporate hauling, while other states require private carriers to offer their for-hire services at collectively-set rate bureau rates. What is the purpose of such restriction on private carrier operations?

Answer. Under the majority of State statutes mandating regulation of the intrastate trucking industry, for-hire carriage is generally defined to be intrastate transportation services provided by a carrier on a for-hire basis for a shipper. As interpreted by State courts, legislatures, and commissions, Compensated Intercorporate Hauling (CIH) falls within the definition of for-hire, regulated carriage. Also, according to our information, virtually every State commission permits the right of "independent action" under which carriers are free to deviate from the levels of rate bureau tariffs, which make us question the assertion that certain carriers are held to bureau rates. Indeed, the U.S. Department of Justice in the *Southern* case, *Southern Motor Carrier Rate Bureau Conference, Inc.* v. *United States,* — U.S. --, 85 L.Ed 2d 36 (1985), challenged State rate bureau procedures precisely because the States had preserved the right of independent action, thereby placing State regulatory policies in doubt.

Therefore, we doubt that the requirement of bureau tariffs is a real problem. The purpose of State restrictions on CIH is the obvious need to comply with State statutes, which are, of course, subject to amendment at the behest of private carrier interest.

Senator EXON. Mr. Chairman, I just wanted to add something here if I might. I heard that previous testimony. Florida is a peninsula, and I think that is an excellent point that you have made, and I am not sure that what works in Florida is necessarily good for the other 49 States.

Mr. **Rasmussen**. That is what I would like to emphasize also.

Senator **Packwood**. Mr. Davis.

Mr. **Davis**. Thank you, and good afternoon, Senators and gentlemen. My name is Bob Davis. I am the owner of Transportation Cost Control, a firm of transportation consultants in Milwaukie, OR. I am here today to speak in opposition to further deregulation of common motor carriers.

Today we have a uniform classification of freight through the national motor freight classification. A system of class rates based upon classification ratings, has been developed by common motor carriers and the rate bureaus.

A shipper can contact a carrier anywhere in the United States and they instantly have a basis for discussion and understanding. A shipper that is dealing with a regular common motor carrier can, with reasonable assurance, expect that the carrier will transport the product safely and timely.

Most carriers that I come in daily contact with are LTL carriers. They are generally national or regional in scope of operations. They participate in motor rate bureaus and the national motor freight classification. Today those carriers are required to publish and file freight tariffs. My clients or I can determine from those tariffs what a carrier's rates are and any other information pertinent to the shipment.

The carrier can establish for a shipper discounts based upon the volume of shipments, traffic claims, and any other variables. They can also establish for that shipper specific commodity rates that can apply between two specific points, or it can cover the entire scope of the carrier's operation and the shipper's need.

They have an obligation, however, as a common motor carrier that cannot be overlooked. They are required by law to perform certain duties. They have got certain obligations, and shippers can, without undue fear, trust their products to be transported safely and timely to their intended destination.

Competitive forces will help dictate what they have to pay, but it is today the law that dictates that they can now ship with confidence. A shipper in the smallest city in Oregon can today contact a regular common motor carrier that serves their city and ship to a similarly small and remote city across the country. They have to deal only with the originating common motor carrier. The shipment will be picked up, interchanged to connecting carriers, and delivered.

All of this is happening because the carriers involved have agreed to a uniform classification. They have uniform rules governing loss and damage, they have collectively met and agreed to a division of revenue, and they have agreed to cooperate. They also know that they have an obligation as the common motor carrier to serve all equally without discrimination, preference, or prejudice.

What infrastructure is going to be left in place for carriers who will no longer be able to work through a rate bureau to solve their mutual problems? Are we going to have to negotiate with two, three, or four carriers involved in each shipment, or are we going to have to receive a freight bill from each carrier?

Elimination of the common carrier obligation will eliminate the foundation of a uniform rule as to liability for loss or damage. If a shipment traverses 10 States, which State's law is going to govern the loss of damage? Would it be the origin State, destination, or somewhere in the middle? Being able to transport products throughout the United States with some uniformity has helped manufacturers develop nationwide markets.

With complete deregulation large shippers are still going to be able to command what they want in the way of transportation services. Everyone else is going to have to take what is offered. The new act seeks to transfer some of the existing duties of the Commission to other agencies. Would we expect the FTC will require warning labels on some vehicles, "Warning: Use of this carrier is dangerous to your pocketbook."

The absence of rate regulation, tariff filing requirements, and antitrust immunity for collective ratemaking will cause a significant change in established LTL carriers' operations. These carriers still rely upon collective ratemaking to price their services for hundreds of thousands of shippers, primarily small shippers.

And if I may, sir, I would like to make a comment. I think the NIT League, and I am through another organization a member of it and Nasstac, have intimated they represent 95 percent of the shippers in the country. I think what they mean is that they represent shippers who might ship 90 or 95 percent of the goods, but they themselves might only actually represent a small number of the actual shippers.

I think that 90 or 95 percent of the shippers in this country are very, very small people who make occasional shipments, and they are small manufacturers. The only immediate and long-term beneficiaries of further deregulation is going to be our largest shippers. The competition for their freight is already fierce. They can today take care of themselves. The freight that is going to be left over is going to bear a disproporationate share of the carrier's overall operating cost.

How many more carriers are going to be forced into bankruptcy because they couldn't get lean and mean enough to survive? The carriers can today do virtually anything they want. They can and do discount the class rates more than 50 percent. They can be air freight forwarders. They are property brokers, and they can be contract carriers.

Contract carriers can receive authority to serve commercial shippers and receivers of general freight. That is everybody. They have no limit as to the number of shippers they can serve. They do not have to file tariffs. I cannot see where they really need anything else.

The Commission is now considering a rule that would make negotiated and/or agreed to rates the legally applicable rate if the carrier failed to file a tariff. This would come about if the shipper acted in good faith. What is good faith, and how good does it have to be?

Is the Commission going to decide if it was good enough? I put my faith and I constantly harangue my clients to put their faith in a filed tariff. It is a major problem, but making it legal does not make it right or good. It only makes it legal. I think the Motor Carrier Act of 1980 can and will work without further deregulation or fixing.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You noted in your testimony the importance of liability standards for freight claims. Would you be able to support deregulation legislation which retained current cargo liability requirements?

Answer. While I would urge retention of current cargo liability standards in any new legislation that may be proposed by Congress, I could still not support further economic deregulation, elimination of antitrust immunity for rate bureaus, etc. I hope that my answer to your second question will more fully detail why I still feel this way.

Question. According to your testimony, the collective ratemaking system benefits shippers and carriers. Yet shipper groups support elimination of antitrust immunity for trucking industry collective ratemaking. How do you reconcile these views?

Answer. I could offer a very short answer. Big shippers can operate in a completely deregulated system much easier than smaller shippers, and while complete elimination of economic regulation might benefit large shippers, it will be to the detriment of hundreds of thousands of smaller shippers.

In my most recent testimony before the Public Works and Transportation Committee, House of Representatives, Oversight Hearings, November 6, 1985, I again echoed my basic testimony that I offered to your committee on September 27, 1985.

What I believe is a critical issue in all of these proceedings, and who is saying what, etc. is to look at the motor carrier industry and shippers in two extremely different categories.

One segment of transportation consumers are urging elimination of the remaining vestiges of economic regulation. It is NIT League, NASSTRAC, NAWGA (North-American Wholesale Grocers' Association) and other larger shipper organizations that primarily voice opinions of our larger shippers. Generally supporting their views are a group of carriers who have most benefited from the MCA of 1980 and who would most benefit from further economic deregulation.

On the other side of the deregulation issue are general commodity carriers, those that primarily haul LTL freight. This is the group of carriers who will haul freight for anyone, to and from anywhere, will take a 100 lb. shipment or the 2,000, 10,000, 30,000, etc. They are the group who still utilize motor rate bureaus. Coupled with this group, but very unfortunately not vocal at all because they generally have no idea what a motor rate bureau does, what it will mean if there is complete economic deregulation of carriers, are, of should be, hundreds of thousands of small shippers. This is a group that I am familiar with, as almost all of my clients will fall into a group that I would categorize as a small shipper.

While NASSTRAC is an association of shippers who ship smaller parcels, they are generally not small shippers.

General Commodity LTL carriers have to maintain terminals throughout their service area, in addition to various types of equipment, offices, personnel, etc. to support their operation. While these has been more than 10,000 new ICC certificated carriers since the MCA of 1980, they are almost exclusively truckload carriers. One carrier, Leaseway, attempted to set up a large regional LTL system. They failed. LTL general commodity carriers serve the public, and are to serve without preference or prejudice. They are the only class of carriers who has this obligation.

While a truckload carrier will certainly offer their service to the general public, it is infrequent that small shippers have truckloads of freight. When they have something to ship they look almost exclusively at the general commodity carrier.

Serving the general public requires the ability to serve all points in the U.S. No carrier can hope to achieve this by themselves. A collective group of carriers, working through a motor rate bureau, can agree to interline shipments, even in areas where they may jointly serve and compete for some traffic. These vital interline agreements have been worked out under the auspices of the motor rate bureau with antitrust immunity. Elimination of antitrust immunity is going to eliminate the ability of general commodity carriers to discuss interline arrangements with another carrier without fear of violating antitrust laws.

Another area where a motor rate bureau provides vital information and a needed function is in establishment of base levels of rates between all parts of the country.

It is relatively easy to contact a truckload carrier and ask them what their rate is between particular points. $1.15 per mile, $1.00 per mile, $1.25 per mile. They are hauling truckload traffic, or you pay as a truckload.

Ask a general commodity LTL carrier what their rate is for 200 lbs. of plastic articles from Portland to Washington, D.C. How do they price that 200 pounds? How does it fit in as a mix with 200 or so other small individual shipments that might be going to the same general area? How can they readily cost each shipment? Compound those two hundred shipments with two or three thousand others that a larger LTL carrier might have out of it's Portland terminal (coming however from many individual cities in the metro area), with those from two or three hundred other terminals nationwide, going to every conceivable point in the U.S. How do they handle those shipments that are going to points that they do not serve? Do they just dump shipments that they cannot handle on someone's dock without any liability for their further handling? What charges will apply to those interlined shipments? Is every carrier in the country going to have to have a staff of sufficient size to price all these various shipments?

Motor rate bureaus provide valuable sources of data for obtaining needed information as to costs, connecting carriers, and publishing efficiencies. Carriers do meet and establish base (or very importantly now days, a maximum) rate level. These base or maximum rate levels do, as some critics charge, include the efficient with the less efficient, and reflects an averaging of hundreds of variables.

More efficient LTL general commodity carriers can and do offer discounts to their shippers, and whatever increased cost that may be built into the base or maximum class rate level can be discounted out by individual carriers.

All of this group of carriers must additionally do another extremely important thing. File their tariffs with the ICC. While you might view this as a formality, some have termed it paper shuffling, I believe, as does the Antitrust Division of the Department of Justice (Business review letter dated May 22, 1984, to J. N. Baker, Chairman of WRTA and to Bruce B. Wilson, V. P., Law, Con Rai) that

"The Division views rate publication as a useful function that enhances rather than decreases the efficiency of a competitive market. By tabulating and disseminating available transportation rates, a publication service provides a ready source of information that may facilitate "comparison shopping" for the best available price and service options and allows carriers to inform prospective customers of their prices and conditions of service."

LTL general commodity shippers are now afforded some protection by the ICC. They can review freight tariffs that are filed and posted. They know that these tariffs have the force and effect of law. If there is a dispute as to applicable charges those filed freight tariffs can be reviewed and a determination made as to applicable charges.

If a shipping clerk is comparing charges between five different carriers that utilize, for example, RMB 583 Class Rate Tariff, he (she) knows that the published charge in the tariff, less whatever applicable discount a carrier may have published for the shipper is the price that will be paid. Comparing the same price less a 20%, 20%, 25%, 25% and a 30% discount is going to lead to a very quick answer as far as who has the lowest charge. The same five carriers, with each utilizing a slightly different class rate scale, with varying discounts, is certainly going to compound someone's work load, but generally leaves them with the same cost. I have made several of these different comparisons and the bottom line usually works out, within a few cents per cwt., the same.

Why do individual shipper groups want rate bureaus eliminated, elimination of economic regulation, etc? I believe a good example is contained in the statement of Mr. Denis R. Zegar, VP, Government Services, National-American Wholesale Grocer's Association (NAWGA) in the recent House Oversight Hearings. During his oral testimony in support of further deregulation he stated that a small NAWGA member will have $200 million per year in revenue. $200 million is a small NAWGA member. How many small businesses are going to have two million dollars in revenue, much less two hundred million.

What kind of economic clout is a two hundred million dollar a year firm going to have as opposed to a two million, or even a two hundred thousand dollar a year firm. It truly is the old story of the rich wanting to get richer, and the poor geting much poorer. Economic regulation does offer a minimal amount of protection to smaller shippers.

The State of California has had a system of quasi-deregulation for the last five or six years. A study has just been done on their system and some interesting comments were just issued in The Proposed Report of Administrative Law Judge William Turkish, Case 10368, Application 83-11-49, and I. 84-05-048.

In this report it was stated:

That a system of filed tariff rates would be in the public interest.

That their system had been destructive.

Non-compensatory rate cutting amoung carriers had contributed to chaos and uncertainty in the for-hire motor carrier industry in California.

That an investgation should be instituted regarding the relationship between primary carriers and their sub-haulers as it pertains to their divisions of revenue.

That a motor rate bureau system of rate making, with antitrust immunity, would be beneficial to motor carriers, shippers and in the public interest.

That there had been heavy truck accidents since 1983, and that distructive noncompensatory rate cutting, with resultant drops in revenue left no money for normal truck maintenance, tire replacement and equipment replacement.

That it has had a negative effect on truck safety.

As I stated in my testimony during the hearing, I would urge you to not further dergulate motor carriers. Keep the tariff filing requirement and make the Commission enforce the current law. Enforcing the current law would give the Motor Carrier Act of 1980 a chance to work as I believe Congress intended it to work.

Senator PACKWOOD. Mr. Paull.

Mr. PAULL. Mr. Chairman, Senator Exon.

My name is Ed Paull. I am the traffic manager for Precision Steel Warehouse, Inc., a steel service center located in Franklin Park, IL. I am also the token shipper opponent to the Trucking Deregulation Act of 1985. We oppose this act for three basic reasons, and I hope they are of interest to this committee since they may affect the survival of many small businesses throughout the country.

The first reason is in the interest of competition. Like all other small shippers and carriers alike, we have to compete with the giants in our particular industries, and we love it. We like nothing better than to compete toe to toe with the biggies, because we feel we are better than they are.

We do things better, we have a better product, a better service, and our price is just as good. We like to do this if we are on an equal footing, because we can be successful in that way. But we must be on an equal footing before we can compete with them. If not, we just do not belong in the business.

Our industry is rather unique in that, because we have a relatively inexpensive commodity, freight charges are fully 15 percent of the final cost of our product to our customer. Fair freight charges are absolutely essential and very important to us. We cannot afford to be discriminated against and we cannot afford to have large shippers enjoy advantageous rates at our expense, and certainly we cannot afford not to know because there would be no tariffs to be checked.

The Trucking Deregulation Act of 1985 not only would allow these discriminatory and below cost pricing practices to continue, but they will actually make it almost impossible for us to find out when this is occurring and if we are being discriminated against.

Recent Interstate Commerce Commission practices and policies have already started this trend by allowing secret rates to be published by code numbers and also unpublished contract carrier rates.

Our second concern is simply justice and fairness, and I think that just because we are small and lack economic clout that does not mean that we should be prime targets for price gouging.

While some of the large increases in rates in the last 5 years are because of imbalances in the rate structures, a good portion I believe are because of marginal and below-cost rates being enjoyed by only the largest shippers in this country. I have even heard of some of the largest constructing their own nationwide rate structures and telling the carriers, take it or leave it if you want to do business with us.

Just as the small carriers do not have the resources to set their own rates, small shippers do not have the resources to set rates or to check every available rate throughout the country. The proliferation of individual carrier tariffs, which was hailed as a great benefit of deregulation, has been an absolute disaster.

We have ended up with two classes of tariffs: a large group of them which are virtually identical to the rate bureau tariffs. They are not even worth checking, but you still have to check to be certain. I ran a study and found out on a yearly basis I could have probably saved $23,000 using all of these individual tariffs, but it would have cost me $60,000 to administer this.

The second group of tariffs is what really disturbs me, and those are the tariffs that are allowing people to take advantage of the small, unsophisticated shipper by deceptive practices. I just had this experience last week for the first time. A carrier comes in and offers a 30-percent discount. How can I refuse that? That is almost double what I am getting.

It is not 30 percent. It is 30 percent of that carriers tariff. Small unsophisticated shippers do not know this. They assume that the Interstate Commerce Commission is ensuring proper, safe—or, excuse me—just and reasonable rates, and a discount off of that has to be 30 percent. Well, it is not. It was only 12 to 16 percent. This is a growing practice among a small group of unethical carriers. We only want fairness and justice in our rates and the ability to compete.

It is also not fair for many organizations that come before this committee and others to state that they represent vast numbers of people—membership possibly, but they certainly do not represent all the people within those groups. As you know, in any organization there is a small group of very large corporations, depending upon what organization it is, who control it, who make the policy, and who speak for it.

And that is fine as long as they do not represent themselves as speaking for everyone. Every Senator and Congressman in Washington represents all of the people in their home State and their district. I have never heard of one being elected unanimously.

Our final reason for opposing this act is that we oppose total regulation, and this is what I believe this would lead to. These abuses, as they become more widespread and more known, are going to cause a reaction to them. We are going to see the same knee-jerk reaction we had in 1935 with the original act.

We saw it again in 1980. When we had an antequated system that needed repair, instead it was junked and this is just the final nail in the coffin.

Total regulation is not the answer. Total deregulation is not the answer, and here in Washington, where the art of compromise has been honed to a fine edge, I cannot understand why it has to be them or us, right or wrong, deregulation, regulation. There has to be a happy medium somewhere and I hope you can find it.

Thank you very much for the opportunity to appear.

STATEMENT OF EDWARD S. PAULL, TRAFFIC MANAGER, PRECISION STEEL WAREHOUSE, INC.

My name is Edward Paull, 3500 North Wolf Road, Franklin Park, Illinios 60131. I am the traffic manager for Precision Steel Warehouse, Inc., a steel service center with principal offices at Franklin Park, Illinois. Precision Steel Warehouse, Inc., is engaged in the sale and distribution of steel coil and sheet products. Its products are processed and distributed from facilities located at Franklin Park, Illinois and Charlotte, North Carolina. Raw materials are received at these plants from mills in the midwest and east and finished goods are shipped from our plants to over 2,000 destination throughout the United States and Canada.

Motor carrier services are used for both inbound and outbound movements and virtually all outbound traffic moves on LTL class rates. I am responsible for all traffic and shipping functions at the Franklin Park, Illinois facility and have over 20 years' experience in the field. Almost 200 shipments per day originate at this facility. The majority move via motor common carrier at an average weight of 1100 pounds per shipment.

I am authorized to submit this statement on behalf of Precision Steel Warehouse, Inc., by Mr. David Hillstrom, President and Chief Executive Officer, and represent that it sets forth the official position of Precision Steel Warehouse, Inc.

Mr. Chairman, I wish to thank you and the members of the subcommittee for permitting me to appear here today and represent my views, as a medium sized shipper of general commodities, on a proposed bill that has styled the "Trucking Deregulation Act of 1985."

The news media has reported that this bill was sent to the Congress by the Department of Transportation on September 12, 1985. I understand that the bill proposes to virtually totally eliminate economic regulation of the motor carriers of general commodities. These are the carriers that my company, and thousands of other companies like mine, rely upon every day for pickup, line-haul and delivery of our company's products to our customers and for receipt of inbound raw materials. If we are to reach our markets and compete against larger competitors, we need dependable, reliable, safe and financially healthy motor carriers that will transport our shipments at reasonable and non-discriminatory rates.

During the first 20 of my 25 years of involvement in trafffic and transportation, it was my experience that my employers' transportation needs were generally well met by the for-hire carriers that we used. However, I welcomed the Motor Carrier Act of 1980 as I believed it would enlarge the opportunity of new carriers to enter the market, and for existing carriers to broaden their authorities without great difficulty. I looked forward to even more competition and hopefully better rates.

However, during the past five years my great expectations for the MCA have been shattered by the results. In the transportation of less-than-truckload shipments there are far fewer LTL carriers, most of the remaining general freight carriers are having financial problems; service is not better; and rates are substantially higher. I attribute most of the problems in the transporation arena that have occurred during the past five years to the failures of the Interstate Commerce Commission, and not to the provisions of the MCA. That is why I sought to testify at the September 9, 1985 Oversight Hearings of this subcommittee on the MCA '80. On September 19, 1985 I submitted a written statement for the record in the MCA '80 Oversight Hearings of this subcommittee. Rather than rehash the points which I have discussed in that statement, I am attaching hereto, as Appendix "A", a copy of that statement, and ask that it be incorporated into the record of this hearing as a part of this statement.

THE TRUCKING DEREGULATION ACT OF 1985

I have not obtained a copy of the proposed bill, and, therefore, I have not had the opportunity to read it. However, the news media report that the proposed bill virtually totally deregulates the for-hire motor carriers. I understand that the TDA '85 basically would make several changes, including:

(1) The elimination of all remaining ICC regulation of trucking rates and entry;

(2) The elimination of antitrust immunity for collective ratemaking;

(3) The elimination of tariff filing and publication requirements; and

(4) The elimination of the "common carrier obligation".

I shall address several of the problems which are likely to occur if the TDA '85 were to be enacted into law.

1. Entry

From my company's point of view I would not be in favor of any legislation that permitted a party to become a for-hire carrier without first being required to demonstrate its ability to meet, and then being required to continue to observe, certain enforced standards relative to financial fitness, safety and insurance for public liability, property damage, and cargo loss and damage. Deregulation of any of these items would be disastrous for the public at large.

During the past five years the ICC has granted authorities to over 10,000 new entrants. As I said earlier, the presence of more carriers was probably a good thing. However, there now seems to be some doubts about whether the large number of new entrants has proven to be good for the public interest. The ICC may have permitted too many new for-hire general freight carriers. As an example, it is reported that the truckers' insurance rates are skyrocketing.

The trucking industry has become divided into LTL haulers and TL haulers. Prior to 1980 the general freight motor carriers competed for and hauled both LTL and TL shipments. The new entrants seem to have focused upon and captured much of the TL business, causing the remaining LTL carriers to have excess capacity. That has evidently led to higher costs and much higher freight rates for LTL shipments, a problem upon which I have elaborated in the attached statement which I have submitted in connection with the September 9, 1985 MCA '80 Oversight Hearings (Appendix A).

2. Tariff publication and filing

The most troublesome provision of the TDA '85 is the proposal to eliminate the requirement that for-hire motor carriers publish and file tariffs with the ICC. This change would cause a number of results that are not in the public interest. First, it will permit carriers to change rates on the spur of the moment rather than with some sense of order based on reasonable statutory notice requirements. Second, it will preclude an interested party from objecting to unreasonable rates, unreasonable classifications, unduly discriminatory rates and below-cost rates. Indeed, there will be no way for an interested party to ever learn whether a for-hire motor carrier is maintaining unreasonable classifications, assessing unduly discriminatory rates or below cost rates to the benefit of another party.

Third, the elimination of the ICC's regulatory authority over classification of freight, the level of rates and unduly discriminatory rates means that there will be no convenient, relatively inexpensive forum where a shipper—large, medium or small—can turn to protest, complain, and seek redress with respect to rates, rules, classifications, services or other practices. Every shipment—200 a day for PSW—will essentially become the subject of a separate contractual negotiation with each carrier used. Our only remedy with respect to problems arising out of freight tendered to or received from carriers with respect to their rates, rules, charges, practices, etc., will be to take the much more expensive and time-consuming route of filing against carriers in a state or federal court based on the common law, each state's statutory law, the Uniform Commercial Code, or to try and fashion a remedy under the federal antitrust laws. In the latter regard, the TDA '85 will condone unjust rate discrimination by for-hire motor carriers since the provisions of the Robinson-Patman Act do not apply to services.

3. Antitrust immunity for collective ratemaking

I see no need to eliminate the antitrust immunity for collective ratemaking. Over the years I have found that the collectively made level of class rates of the rate bureau carriers serves as the best source of price information. The tariffs published by the major motor common carrier rate bureaus offer shippers of all sizes the most efficient, comprehensive and economical method for the dissemination of legally applicable classifications, rates, rules and charges. In my attached MCA '80 Oversight Hearings statement (Appendix "A"), I describe how, during the past five years, the ICC, in failing to faithfully enforce the provisions of MCA '80, has permitted carriers to assess secret rates and hide discounts. This need not be, and should not be, the case.

In addition, elimination of the antitrust immunity for collectively ratemaking will not necessarily mean that the amounts of increase in freight rates will be any lower than they would be under the collective ratemaking system. The reason for this is twofold. First, simple economics tells us that carriers must necessarily recover their costs and make a profit if they are to stay in business. Second, a conscientious ICC should be able to use its expertise to judge the reasonableness of collectively made general rate increases. Current ICC regulations require any general rate increase to be supported by a great deal of economic evidence contained in the MC-82 justification statements. Elimination of the jurisdiction of the ICC and the elimination of collective ratemaking will simply mean that carriers can gouge customers at will. The most likely recipients of such rate gouging will be the medium and small sized shippers.

All the rate bureaus really do is provide their member carriers with reliable cost data that permits the carriers collectively to better allocate rate increases among the classifications ratings, the weight brackets and according to distance in some rationale manner. The results of any collective action are currently subject to further scrutiny by the ICC and possible shipper protests—before the rate increase the rate increases can become effective. An effective ICC will not let the collective ratemaking process be used to establish unreasonably high rates on any given segment of traffic. An effective ICC will encourage and permit cost justified and competitive rate reductions wherever warranted. An effective ICC will also see to it that the carriers, whether collectively or individually, continue to maintain reasonable classifications, rates, rules, charges, and practices, all of which are not below cost, and are free from undue discrimination.

An ICC that does the job envisioned by the MCA '80 would see to it that the rate levels were adequate for efficiently operated carriers to earn a reasonable rate of return and for the shipping public to be provided with reasonably adequate service. The TDA '85 will not accomplish these vitally important objectives of our National Transportation Policy.

4. Common carrier obligation

As I understand it, the proposed bill would also eliminate the longstanding statutory requirement that motor common carriers provide continuous and reasonably adequate service under their operating authority to the shipping public. If that provision takes effect, all shippers would have to look to the common law, and the laws of each state, for help. In addition, I understand that the proposed bill will also eliminate the statutory provision which codifies the common law principle that a common carrier is basically an insurer of the goods. Over the years the ICC has established some workable regulations that are helpful to all shippers in filing the pursuing claims against carriers for loss and damage. I am very concerned that if the TDA '85 becomes law all shippers claims for loss and damage, and problems experienced in obtaining service, will be henceforth relegated to the complexities of the common law, the different laws of every state and the Uniform Commercial Code.

CONCLUSION

I respectfully submit to the subcommittee that the TDA '85 or any other bill which would, in any way whatsoever, provide further deregulation of the trucking industry would not be in the public interest. At best, it would only benefit the larger shippers. The medium and small sized shippers would never know what hit them. They would be unable to determine what their competitors are being charged, and, as a practical matter, unable to do anything about unduly discriminatory rates, rules, charges or practices in the state or federal courts. What *is* needed, instead of further deregulation, as stated in Appendix "A", is an ICC that will faithfully enforce the current provisions of the MCA '80, particularly the provisions that require all for-hire motor carriers—common and contract alike—to publish and file tariffs with the Commission, to refrain from publishing rates that are available only to specifically named or secretly coded shippers, and to require all rates not to be below cost, to reflect reasonable classifications, and not be be unduly discriminatory.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You stated in your testimony that the elimination of the antitrust immunity for collective ratemaking would be a "disservice to the public interest, particularly the medium and small sized shipper . . ." How do you reconcile this view with the fact that the National Small Shipments Traffic Conference and other shipper groups support elimination of collective ratemaking antitrust immunity in the trucking industry?

Answer. My support for continued Anti-trust immunity for Collective Ratemaking is not based on a desire to protect carrier profits. It is based on my desire to protect the interest of small and moderate size shippers. Collective ratemaking provides us with a uniform base by which we can measure the net value of a carriers pricing policy.

Small shippers do not possess the knowledge or resources to determine the net rate on each of their shipments. Erosion of this base has already occurred. Carriers individual tariffs may be, and in fact in some cases, are higher than the collectively set rates. These carriers then offer higher discount percentages to unsophisticated shippers who end up paying higher net rates.

If the Interstate Commerce Commission would do their job and insure that these base rates were reasonable, carriers would still be free to discount the same base, depending on their efficiency and their desire for the freight.

With regard to the position of the National Small Shipments Traffic Conference, we both know that they represent the position of very large shippers of small shipments. Their position has been formulated by a handful of economically powerful members for their own benefit.

Question. You stated in your testimony that safety, insurance for public liability, property damage, cargo loss and damage, and financial fitness are fundamental prerequisites before any for-hire carrier should be permitted to operate. I share that view. I believe that deregulation legislation should only address economic issues—safety and insurance should continue to be regulated by the federal government. Some continued regulation in the area of cargo liability also may be needed. Could you support deregulation legislation which called for continued federal regulation in the areas of safety, insurance, and cargo liability?

Answer. I could support any deregulation legislation which included safety and insurance requirements if it included:

1. The requirement that all rates be published in open tariffs, without secret codes.
2. The requirement that the ICC, or some agency, determine that the rates published are reasonable, non-discriminatory and cost justified.

Senator PACKWOOD. Thank you.

Mr. Leach.

Mr. LEACH. Thank you, Chairman Packwood.

My name is James K. Leach. I am manager of transportation for the J.C. Penney Co., New York City, and chairman of the National Industrial Transportation League's Small Shipments Transportation Committee.

The league is pleased to be here at the first of the hearings on how to best structure deregulation of the trucking industry. We are grateful for the opportunity to present our members' views on what future steps should be taken to assure that our mutual goal of a market-disciplined trucking industry is realized.

As we testified at your recent oversight hearing, league members are generally satisfied with the current regulatory environment and the flexibility it affords the interstate trucking industry in meeting shippers' changing market needs. We believe that now is the time to begin work on the legislative changes needed to complete the deregulation of this industry.

These changes include easing entry requirements, abolishing antitrust immunity for collective ratemaking, and better realizing the productivity benefits envisioned by Congress in the 1980 Motor Carrier Act and the 1982 Surface Transportation Assistance Act.

Our members believe that the two most important steps in this transition involve the standards for operating rights authority and the elimination of the industry's antitrust immunity for collective ratemaking. With respect to operating rights, the league would urge that a single "fit, willing and able" standard be used in determining whether to grant an operating rights application.

With respect to antitrust immunity, the league believes that today's freer regulatory environment and the Interstate Commerce Commission's failure to use its rate review powers to protect against abuses of collective ratemaking require the removal of this immunity for the trucking industry.

Another important step in realizing the productivity gains envisioned in the 1980 and 1982 acts and those contemplated in further deregulation measures is assuring the free flow of commerce throughout the Nation. To realize this common goal, we would urge Congress to seriously consider efforts permitting greater access to and from the interstate highway system, as well as narrowing the ever-widening gap between interstate and intrastate operating requirements.

One of the most critical foundations for success of further deregulation of the motor carrier industry is ensuring that the marketplace, not State governments, become the regulator of trucking services offered to the shipping public. The States should be prohibited from entering the transitional void which would be created by the removal of the Federal economic controls over the industry.

Shippers believe that unless Congress acts decisively on this issue, another regulatory structure will be created. It is imperative that any legislation deregulating of the trucking industry ensure that the marketplace assumes its rightful role as a regulator of these vital transportation services.

In evaluating what other steps should be taken to achieve our common goal, league members currently are studying a variety of issues, including eliminating of tariff filings and the treatment of residual regulatory functions. The league's committees are in the process of reviewing various proposals affecting motor carriers, including the administration's recent deregulation draft bill and the pending House deregulation measure.

We would note that some of our members individually have expressed their support for H.R. 3222, the National Motor Carrier Productivity and Safety Improvement Act of 1985. We look forward to sharing the results of our committee's review efforts with you as soon as they become available.

In conclusion, the league believes that Congress should now complete the process of deregulating the trucking industry. In doing so, particular attention should be paid to the further reform of entry requirements, the abolition of the antitrust immunity for collective ratemaking, and the clear delineation of what role, if any, States may play in this new regulatory environment and in curbing the productivity benefits already mandated by Congress.

We thank you for this opportunity to present the views of the shipping community, and offer our continued cooperation to you and your staff in realizing our common goals of an efficient and innovative trucking industry. We would be happy to answer any questions you may have.

And I would like to say also, Senator Packwood, if we may enter into the record the testimony for the American Retail Federation.

[The statements follow:]

STATEMENT ON BEHALF OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Chairman Packwood, Members of the Subcommittee: My name is James Leach. I am manager of transportation for J.C. Penney Company, Inc., New York City, and chairman of The National Industrial Transportation League's Small Shipments Transportation Committee.

The League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with the purchasing of transportation services. It is the only nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in interstate and international commerce. Its members, directly or indirectly, are responsible for the routing of about 80% of the country's commercial freight.

The League is pleased to be here this morning at the first of the hearings on how to best structure the deregulation of the trucking industry. We are grateful for the opportunity to present our members' views on what future steps should be taken to assure that our mutual goal of a market-disciplined trucking industry is realized.

As we testified at your recent oversight hearing, League members generally are well satisfied with the current regulatory environment and the flexibility it affords the interstate trucking industry in meeting shippers' changing market needs. We believe that now is the time to begin work on the legislative changes needed to compete the deregulation of the trucking industry. These changes include easing entry requirements, abolishing antitrust immunity for collective retemaking, and better realizing the productivity benefits envisioned by Congress in the 1980 Motor Carrier Act and the 1982 Surface Transportation Assistance Act.

Our members believe that the two most important steps in this transition involve the standards for operating rights authority and the elimination of the industry's antitrust immunity for collective ratemaking. These reforms will make the largest strides in assuring that the competitive objectives we share become a reality.

With respect to operating rights, the League would urge that a single "fit, willing, and able" standard be used in determining whether to grant an operating rights application. This standard's safety and financial fitness requirements should act as an effective and easily administered test to assure that applicants have the necessary qualifications to maintain the industry's high level of professional integrity.

With respect to antitrust immunity, the League believes that today's freer regulatory environment and the Interstate Commerce Commission's failure to use its rate review powers to protect against abuses of collective ratemaking require the abolition of this immunity for the trucking industry. The disparities between marketplace and collectively set rates were well documented in our 1984 oversight testimony.

In calling for an end to antitrust immunity, the League would note that its request pertains to the setting of specific rates and/or rate levels. However, there are related private sector activities where shipper/carrier cooperation contributes to the industry's overall effectiveness. These activities include classification, packaging rules, and other tyes of standard setting such as electronic data interchange, and claims and liability procedures for loss and damage. While we are not certain that these important cooperative endeavors need explicit statutory antitrust immunity, we do believe that any additional deregulation legislation should assure that these activities continue, even if it means affording them some protection from the antitrust laws.

Another important step in realizing the productivity gains envisioned in the 1980 Act, the 1982 STAA, and those contemplated in further deregulation measures is assuring the free flow of commerce throughout the nation.

To realize this common goal, we would urge Congress to seriously consider efforts permitting greater access to and from the interstate highway system. While the standardization of vehicle dimensions for equipment used on the nation's interstate and primary highways promised improved productivity for the industry, the restrictive laws imposed by certain states have greatly eroded the marketplace benefits of these reforms. These productivity reforms do little to assist the industry and its shippers if this equipment is unable to reach many of the nation's shipping facilities.

Another barrier to an efficient, innovative trucking industry is the ever-widening gap between interstate and intrastate operating requirements. As the marketplace continues to streamline interstate operations, these efficiencies often are eroded or lost to the rigid regulatory environment governing intrastate shipments.

To illustrate, although United Parcel Service is an interstate carrier and a major transporter of small shipments, it is not permitted to pick up and deliver packages within the state of Texas. UPS is not the only carrier stymied by Texas's intrastate operating requirements. Many businesses are forced to locate their distribution facilities outside the state so that their shipments are governed by the markedly more flexible interstate operating requirements.

Texas is not an isolated situation. Shippers often are forced to segregate their interstate and intrastate cargos and to use different carriers to transport them. This not only increases the costs of delivered goods, it also dissipates carrier productivity and profits. Participating in intrastate transportation is a costly proposition for interstate carriers. In addition to meeting federal requirements, these carriers must contend with an often conflicting patchwork of state regulations for securing operating rights, tariff filing, and a host of administrative paperwork and other reporting requirements. If the trucking industry is to realize the productivity benefits mandated by Congress, this disparity in regulatory requirements must be resolved.

In evaluating what other steps should be taken to achieve our common goal, League members currently are studying a variety of issues including elimination of tariff filing, the need to insulate interstate carriers from burdensome state rules and regulations, and treatment of residual regulatory functions.

There is a growing sentiment within the shipping community for the elimination of tariff filing requirements. This sentiment is based, in part, on the successful elimination of this requirement for the contract carrier industry, and on the problems we described at your oversight hearings with respect to the use of "letter rates." Currently, the League believes that tariff or price list information should be made available. However, as we indicated earlier, the League committees are studying the issue.

One of the most critical foundations for success of further deregulation of the motor carrier industry is ensuring that the marketplace, not state governments, becomes the regulator of trucking services offered to the shipping public. The states should be prohibited from entering the transitional void which will be created by the removal of federal economic controls over the industry.

The League would strongly urge that some mechanism be provided which makes intrastate truck transportation substantially compatible with interstate practices. There are several ways to accomplish this goal—for example, interstate carriers could be exempted from state regulatory requirements. This would not affect the states' activities with motor carries which operate exclusively within their borders.

Already mired in the morass of conflicting state taxation and registration requirements for interstate operations, and their often byzantine requirements for intrastate operations, shippers believe that, unless Congress acts decisively on this issue, a third regulatory structure will be created. It is imperative that any legislation completing deregualtion of the trucking industry ensure that the marketplace assumes its rightful role as the regulator of these vital transportation services.

As we have learned from other deregulation efforts, there will be certain residual regulatory functions which will remain. The League currently is reviewing the possible options for assuring the most effective administration of these responsibilities. It also is reviewing the creation of a Motor Carrier Administration within the Department of Transportation. We believe that the structuring of these responsibilities will be critical ot achieving our common goals of improved productivity and safety.

The League's substantive committees are in the process of reviewing various proposals affecting motor carriers including the Administration's recent deregulation draft bill and a pending House measure for deregulating the interestate trucking industry. We would note that some of our members individually have expressed their support for H.R. 3222, National Motor Carrier Productivity and Safety Improvement Act of 1985. We look forward to sharing the results of our committees' review efforts with you as soon as they become available.

In conclusion, the League believes that Congress now should complete the process of deregulating the trucking industry. In doing so, particular attention should be paid to the further reform of entry requirements, the abolition of antitrust immunity for collective ratemaking, and the clear delineation of what role, if any, states may play in this new regulatory environment, and in curbing the productivity benefits already mandated by Congress.

We thank you for this opportunity to present the views of the shipping community, and offer our continuing cooperation to you and your staff in realizing our common goal of an efficient and innovative trucking industry. We would now be happy to answer any questions you may have.

STATEMENT OF THE AMERICAN RETAIL FEDERATION

My name is James K. Leach of the J.C. Penney Company, Inc. Today, I am representing the American Retail Federation (ARF), an organization comprised of 51 state retail associations, 30 national retail associations and sustaining corporate retail organizations, which represents a combined retail membership of over a million stores or outlets.

The transportation policies of the ARF are formulated by a Transportation/Postal Committee and reviewed by the member associations and corporations prior to their approval at the general membership meetings.

The American Retail Federation supported the Motor Carrier Act of 1980 as a meaningful, beneficial first step in the removal of Motor Carrier regulation. It is our view the results support further deregulation. Accordingly, the Federation is encouraged by the proposals of the Administration and the House. While recognizing they do differ in some respects, nevertheless, ARF commends the goals and purposes of each as meritorious of support.

The Federation's Transportation Policies provide for: the elimination of economic regulation of motor carriers; creation of a standard bill of lading for common carriers which would include liability (similar to the Hague and Warsaw treaties); the elimination of immunity from antitrust laws for collective ratemaking; the elimination of the paper-shuffling requirements at the Interstate Commerce Commission and various state regulatory agencies; and the elimination of those portions of state regulations which require shippers to segregate and national or regional carriers to separately handle and process interstate and intrastate shipments, while retaining state regulation for purely local operations which are best regulated at a local level.

ARF believes in a greater reliance upon the marketplace rather than regulation. We believe the results of the Motor Carrier Act of 1980 have been beneficial and that further deregulation is both appropriate and desirable.

The American Retail Federation appreciates the opportunity of presenting its comments and urges the members of the Subcommittee to favorably consider legislation consistent with the Federation's Transportation Policies.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In exchange for certain, *total* federal economic deregulation of the trucking industry, could the League support a phase-out, such as over 5 years, of antitrust immunity for trucking industry collective ratemaking activities?

Answer. With respect to whether the League would accept a five-year phase-out of antitrust immunity for collective ratemaking in return for total federal economic deregulation, the League would prefer that this immunity be eliminated as promptly as possible. However, we would be willing to discuss a phase-out of this immunity in return for an end of federal economic control including helping to eliminate the intrastate barriers which inhibit the productivity of interstate trucking operations.

Question. In your testimony you urged elimination of antiturst immunity for collective ratemaking. a. Why do support removal of immunity for these trucking ratemaking activities? b. In your view, does the collective ratemaking system benefit shippers at all?

Answer. We support the elimination of collective ratemaking, because this system of rate setting creates a pass-through attitude in pricing by averaging the costs of all bureau members. It stifles the fostering of a range of price and service options since the efficiencies of individual carriers are ignored in the collective ratemaking process. We also oppose this system of ratemaking since it ignores the needs of the shipping public who have no voice in bureau policy setting activities. With respect to the benefits to shippers of the collective ratemaking process, in the opinion of the overwhelming majority of League members, the disadvantages of this system far outweigh any residual benefits. Many of our members see no advantage in this ratemaking system. We believe that the bureaus' tariff publishing activities can be conducted without antitrust immunity.

Question. In testimony before the Surface Transportation Subcommittee on September 20, the American Automobile Association expressed concern about safety problems associated with 48-foot truck trailers. Do the League's members have any experience with respect to the safety performance of these large trucks?

Answer. With respect to the AAA's allegations about the safety of equipment authorized by the Surface Transportation Assistance Act, many of our members make extensive use of this more productive equipment. They have found it to be no less safe and reliable than the traditional 45-foot trailer. In certain cases, new engineering designs have improved handling characteristics, thus making certain equipment even more safe and reliable than that in use prior to the 1982 Act.

Senator PACKWOOD. Yes.

I am curious. Mr. Davis raised the question that you and NASSTRAC may indeed represent great quantities of shipments, but not shippers. Is that true? Do you represent 80 percent of all the commercial freight in this country, but just a handful of companies and organizations that have great quantities to ship?

Mr. LEACH. The NIT League does represent companies that ship approximately 80 percent of the goods within the country. I do not have the exact number of companies we represent, but I will furnish that for the record.

Senator PACKWOOD. You do lots of less than truckload shipping, though?

Mr. LEACH. Yes sir, the majority of them.

Senator PACKWOOD. Now, you are not inherently afraid of what Mr. Donohue indicated is going to happen: You are sort of in that luxury of a middle stage right now, with lots of competition, but you are soon going to be down to a relative handful of carriers who are going to squeeze you badly. You just do not see that coming, do you?

Mr. LEACH. No, sir. We think it is just basic economics. If that were to happen and you had a reduction in the number of people offering transportation services and, if for some reason, they did start squeezing and the rates, then you would see an influx of new or expanded business offering new services.

Senator PACKWOOD. That is my conclusion, too, as long as entry is relatively easy and somebody else could get in.

Mr. LEACH. Yes sir, I agree.

Senator PACKWOOD. Senator Meiklejohn, let me ask you. You said you thought economic regulation went hand in hand with safety, and yet we have United Parcel, which will not participate in any of these rate-setting conferences, they set their own rates. The last time I saw it, it was almost on one page. The company's business grows tremendously. Customers like them and their safety record is extraordinary, and yet with no economic regulation.

How do they achieve that?

Mr. MEIKLEJOHN. In our State, that class of traffic—you know, they will only handle particular shipments of a particular size.

Senator PACKWOOD. They are basically small package shippers.

Mr. MEIKLEJOHN. Yes, and very standardized for the most part. In our State they are a monopoly, regulated by our utility commission, and they do perform good service. But they are a monopoly service in the State of Colorado for that type of traffic that they handle.

Senator PACKWOOD. Intrastate?

Mr. MEIKLEJOHN. Yes. And I would suggest, Mr. Chairman, that if you looked at it you would see that most of the revenues are intrastate. Now, they do significant interstate transportation, but it is that delivery service that you just cannot beat them on.

Senator PACKWOOD. Senator Danforth.

The CHAIRMAN. No questions.

Senator PACKWOOD. Senator Exon.

Senator EXON. Gentlemen, thank you very much for your testimony. It has been a very long, but a very interesting series of witnesses, and I thank you for coming here and your giving of your time to help us make the decision on this very important matter.

I just have one question, Mr. Chairman, which I would like to direct to my fellow Nebraskan, Eric Rasmussen. Eric, you spoke and spoke well for the association you represent this morning, and

I suspect that NARUC has not taken any stand on the overall bill that the administration has proposed.

You stated your specific objections which, among other things, was part of the preemption and the rights of the States. And at least I am one member of the committee who feels that we have to change that portion of the bill. Let me ask you, though, let us assume for a moment that we by deletion or amendment left out the portions of the bill, specific portions of the bill, that you raised objections to.

I want to ask you what your personal opinion would be on the bill as a whole.

And, Mr. Chairman, I would just remind this committee that this is pretty important testimony as far as rural America is concerned. I thought that Senator Meiklejohn did a very good job as to the overall objections to the bill as far as rural America was concerned and what would happen to rural America if we proceeded with the accelerated deregulation as proposed by the administration.

So what I would like to ask you, as a former State senator and a member of our must important regulatory body in the State of Nebraska and, most importantly, as a farmer and a resident of rural Nebraska who knows our problems extremely well, how do you feel personally, aside from the association, with regard to whether we should pass accelerated deregulation, even if we overcame the objections that you so well pointed out in your testimony this morning?

Mr. RASMUSSEN. Well, Senator, our association has more or less taken a position on the balance of the bill. We have assumed that deregulation is a fact of life, and we would not like to see it totally deregulated immediately because we have to keep a continuation of services and we have to manage it to a certain level and manage it at a pace that the public can accept and that will be acceptable.

I personally agree with that position and we in NARUC have set up a resolution that would centralize all of the registrations. We think all trucking firms, regardless of their nature, general commodities or private, should have a certification. So if they come into the State and we are assured that they have insurance and that they pass the economical ability to transport commodities, I think that this is probably the most important thing that we are concerned with, is that it is managed to a letdown area and it is not just cut off immediately.

Senator EXON. Well, let me pursue just one step further. I think you heard and listened to the testimony by Senator Meiklejohn regarding what has happened to rural America as a result of deregulation thus far. Do you care to make any statements on whether or not you concur with Senator Meiklejohn's attitude with regard to what deregulation so far has done?

And he pointed out that he felt further deregulation would just make the problem that much worse. Do you basically agree with that as a resident of rural Nebraska?

Mr. RASMUSSEN. Well, my observation, Senator, has been that during the past few years since the deregulation bill in trucking, local truckers have bought almost no new trucks, and trucks do wear out and they are holding them together with bailing wire now.

And there is not a lot of business because the economy in the State of Nebraska for freight, it is just becoming less and less services gradually. But right now I think we are probably getting adequate services, but people are accepting less and less service. Not necessarily are they accepting it gladly, but they are just accepting it, and they are not getting the shipments in as promptly as they used to.

Senator **Exon**. Thank you.

And thank you, Mr. Chairman.

Mr. **Rasmussen**. May I add, Senator, that the small shippers that were mentioned here today, UPS, it has been my observation that throughout the years that, every time the Postal Service gets a raise in their rates, that UPS raises it just a couple of cents below the Postal Service rates.

Senator **Exon**. Thank you.

Thank you, Mr. Chairman.

The **Chairman** [presiding]. Gentlemen, thank you very much for your testimony.

Now, we have two panels to go. These are all Washington witnesses. If any of them would like to submit their testimony, I can assure you that it will be read with great care. On the other hand, if you want to testify that is fine, too. You have been waiting quite long.

The first panel is: Mr. Richard Velten, president, National Small Shipments Traffic Conference; Mr. James Carty, vice president, National Association of Manufacturers; Mr. Denis Zegar, cochairman, Ad Hoc Motor Carrier Regulatory Reform Group; Mr. Richard Henderson, executive vice president, Private Truck Council of America.

Mr. Velten.

STATEMENTS OF DANIEL SWEENEY, GENERAL COUNSEL, NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE; AND RICHARD P. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC., ACCOMPANIED BY RICHARD SCHWEITZER, LEGISLATIVE COUNCIL

Mr. **Sweeney**. Yes. Senator, my name is Dan Sweeney and I am the general counsel for the National Small Shipments Group and also for the Drug and Toilet Preparation Traffic Conference. Mr. Velten, who was supposed to be here with me, is up on the shores of New Jersey trying to save his place up there on the beach and he could not come down.

The **Chairman**. So you are here representing Mr. Velten and also some others?

Mr. **Sweeney**. Well, the two shipper groups, the two national associations of shippers, the National Small Shipments Traffic Conference, which is called NASSTRAC, and also the Drug and Toilet Preparation Traffic Conference, which is made up of the companies in the drug industry, they both have in common they are both shippers of small shipments. They are very heavy customers of the LTL trucking industry.

I am not going to read my statement. I am not going to read even the summary that I had. I have been sitting here and listening to this battle go on all morning and I thought maybe I might be able to provide some of the answers to what is really before you.

First of all, the issue which nobody has mentioned is the real issue here today, and that is the total cost of transportation to the American public. The price of transportation for the general freight carriers today is right up here [gesturing].

Now, we as shippers believe that if the deregulation goes forward that the price will drop down here [gesturing]. So we believe that the truckers know what they are talking about and what they are doing here, and we also believe that the shippers do, because we all know what we are talking about. If this deregulation goes through, you are going to see a lower price level to the shippers and to the consumers. There is going to be less money for the truckers, and that is why we are on different sides of the fence.

Ordinarily we get along very well, the shippers and the truckers. But we perceive this as an opportunity to lower the freight level in the country and they perceive it exactly the same way, so we are both fighting each other. Everybody is throwing whatever they can pick up at the other person.

But what really happens, what really is important here, is the price level: We think it is going to go down, they think it is going to go down. We agree with each other. We do not disagree. We know what the facts are.

So when you look at deregulation, what is there left today at the ICC? What is regulated today? There are three things. There is entry, there is the rate regulation, and there is the supervision of the so-called motor rate bureaus.

Now, the first two are not very significant. I could almost say they are insignificant. As far as entry goes, anybody who wants to rent a truck and get a certificate can get one. It takes them 90 days. If there is deregulation, it will not take them 90 days, but you wind up with a whole lot of new companies out there either way. So really it does not make a tremendous amount of difference.

The same thing with the rate regulation. There is a statute on the books about rate regulation and the Commission is not enforcing it. So whether we have deregulation or not, the rate situation is going to be about the same. There is a lot of competition out there. There will continue to be a lot of competition out there. It is not going to change that much.

The third element is the key element, and that is what we are all talking about. That is the rate bureaus. The rate bureaus are the only thing that is worth fighting over. The only important function that the rate bureaus perform today is rate increases. They come along with one general increase after another.

All of them do the same thing. The rest of what they are doing is unimportant. They used to handle rate reductions. Now the carriers do that themselves, so they do not need them for that purpose. They give them these general increases, and this is why they are holding onto them like a life preserver.

It is like we have all of these trucking companies around the room, they are playing Monopoly. Everybody starts out with $500, you are all doing the best you can to win and get the business and make a profit. Over here there is a big fan and there is some money outside. The rate bureaus are out there, they throw money into the fan, they blow the money in. Everybody picks up some more money, so that is why the truckers love them.

Somebody like Mr. Imperatore, who is a very successful and talented man, who could still succeed beyond the wildest dreams of any of these other poor truckers that they are talking about, he would still succeed under deregulation. He knows that, but he likes the idea of having this money blow in every once in a while and he can pick up some of that money and they are all happy with it. It is a very nice system.

But the problem is, the money out there in the hall belongs to the shippers and the consumers, and that is what we are trying to get rid of. We do not want that fan. We want that fan taken down.

And so Congress could shift its focus here. Instead of worrying so much about a "deregulation bill" which seems to raise hackles all over the place, if you could simply get rid of the rate bureaus, that would solve the major problem with the rate regulation. And if everybody wants the Commission to continue to put stamps on pieces of paper and continue to claim that they are regulating rates when they are not, we could all live with that.

But the thing we cannot live with is the rate bureaus. It is intolerable for the Federal Government to continue to extend antitrust immunity for groups whose sole purpose is to raise rates.

Now, if somebody comes in here to make an argument for the rate bureaus and says, listen, price fixing is great, well, then let us have it for the rest of American industry. If it is a good thing, let us extend it, let us get rid of the antitrust restrictions for everybody.

But if antitrust means something, if we do not want people setting rates—how would the truckers like it if all the oil companies got together and set their fuel rates? They do not have to face that problem, but their customers do—then let's end the immunity for rate bureaus.

So that is where we are all headed. Either we get rid of the rate bureaus or we do not. That is the battle, and what is at stake is the price the American people pay for their transportation.

As far as the health of the trucking companies, we had a lot of argument about that all day long. There are 12,000 new truckers in the business since 1980, new companies. Well, naturally it puts a squeeze on the other companies. There are companies going bankrupt. Naturally, if you have got people coming into the business, somebody has to go out. There is not room enough for everybody in the same room.

But there are more carriers in the business today than there were in 1979, so the Motor Carrier Act has not killed carriers. If anything, there is more of them around. And the total profit of the industry is about the same as it was back in 1980 before the act was passed.

Now, where does this argument about the health come in? If you look at the profile of the industry, you will see that there are some winners and there are some losers. What stands out? UPS, which is the largest carrier in the country, their profits have gone up 300 percent since 1980. APA, who was sitting here before, Mr. Imperatore, he has an 80 operating ratio. He is making 20 cents on the dollar.

UPS handles the smallest, the least desirable packages, the ones that go to your home. If UPS handled a 50-pound box of encyclopedias to your house, you would pay $5 or $6. If a rate bureau carrier handled it, you would pay $45. That is the difference. The rate bureau has pushed these rates up.

We showed in our testimony that since the beginning of 1981 the rate bureaus have raised the rates 60 percent on the smaller shipments, the ones that go to your house. UPS, which is not in the rate bureau, which operates on its own, has raised its prices only about 15 percent in that same period of time.

So it is possible for the carriers to do very well without rate bureaus.

[The statement follows:]

Statement on Behalf of National Small Shipments Traffic Conference and Drug and Toilet Preparation Traffic Conference

My name is Richard G. Velten and my office address is 501 George Street, New Brunswick, NJ 08903. I am Dirctor of Transportation for the Hospital Supply Division of Johnson and Johnson Company. I am appearing as the President of the National Small Shipments Traffic Conference, Inc. (NASSTRAC) and also as an officer representing the Drug and Toilet Preparation Traffic Conference, Inc. (D&TPTC). Also with me is Daniel J. Sweeney, General Counsel for both shipper groups.

Representatives of NASSTRAC and D&TPTC testified at the hearings which led to the passage of the Motor Carrier Act of 1980, and at the subsequent oversight hearings concerning the implementation of the Act where we have stated strongly that further deregulation of the trucking industry is needed. On behalf of the members of these shipper groups, over 300 companies and industry associations shipping a large volume of LTL shipments throughout the nation at rates regulated by the Interstate Commerce Commission, we appreciate this opportunity to express our views on completing the economic deregulation of this industry.

Inasmuch as two bills designed to accomplish the deregulation of the trucking industry, the Moody Bill and the DOT Bill, have already been filed in Congress, my remarks will focus largely upon the respective merits of those bills. Rather than review each provision in detail, I will concentrate only on the major provisions.

RATE BUREAU IMMUNITY

The 1980 Act left intact the ability of the motor carrier rate bureaus to perform their most offensive function, collective general rate increases. Ironically, the other major function of the rate bureaus, processing rate reductions, has shifted to the carriers individually and the proliferation of discounts and contract rates established on an individual basis now dominates the ratemaking scene. The peculiar result is that, whereas in the prior era the rate bureaus could point to balancing functions in the public interest, such as commodity rate reductions and preserving rate relationships among shippers, the rate bureau scene is now bereft of those functions.

In a word, the only important function the rate bureaus now perform is to implement a never-ending series of general rate increases. (I should mention that the National Classification Committee is a separate matter, as it does not set either rates or rate increases.) Under present circumstances, it is simply intolerable for the federal government to continue to extend antitrust immunity for groups whose sole purpose is to raise rates for shippers and consumers. Their efforts have led to unrealistically high rates for shippers too small or unsophisticated to obtain discounts and, even as to shippers which obtain substantial discounts for carriers individually, the ever-increasing list prices set by the bureaus impact upon the discounted rates. It is a little like raising the prices throughout a store by 50 percent and then announcing a 50 percent off sale.

In order to fully appreciate the inequitable function performed by the bureaus today, one must look at the ICC's performance in "reviewing" their general rate increase. That is a very short story. What the Commission has been doing to review and restrain rate bureau general increases can best be described in one word "nothing". Whereas the original grant of collective ratemaking immunity was extended with the assurance that the Commission would be reviewing their rate proposals to prevent excesses, the safety value has been removed. Under these circumstances, the time has long since come to terminate antitrust immunity for collective ratemaking.

In my testimony during this Committee's Oversight Hearing in September, 1984, I pointed out that between January, 1981, and June, 1984, the rate bureaus published a cumulative increase of 55 percent on minimum charges, the rates paid typically by the smallest shippers and receivers, as well as by many other shippers. With the general increases which ensued throughout 1985, the cumulative increase in minimum charges since 1980 is now over 60 percent. In view of the modest rate of inflation during the past five years, the impact of the rate bureaus is obvious. While I should add that because of discounts most shippers are not paying those higher charges, their discounts are not coming from the rate bureaus and there are some shippers who must be paying list price.

Both the Moody bill and the DOT bill provide for termination of antitrust immunity for motor carrier collective ratemaking groups. The Moody bill would remove the immunity 180 days after the date of enactment, but further provides that a general increase could not be collectively set during that period. The latter qualification is advisable in order to avoid the prospect of the bureaus giving the shippers one last major rate increase "for the road". The DOT bill would provide for repeal of immunity effective on July 1, 1986, If this bill is to be progressed, it should be modified, as is the Moody bill, to prohibit general increase up until the sunset date for the rate bureaus.

ENTRY

The Chairman of the Interstate Commerce Commission, in recent testimony before this Committee, has described the Commission's current jurisdiction over entry as a massive shuffling of paper. As a practical matter, any one who applies for authority receives whatever authority it seeks, provided that it fulfills the minimal conventions of a supporting shipper and insurance and safety reuirements. All that the Commission lends to the inevitable process is the filing fee and a time lag of several months before a carrier can start doing business. There is a need to put an end to what has become a charade, but the requirements of safety and insurance should be maintained and turned over to DOT.

Since both the Moody and the DOT bills provide for complete elimination of motor carrier regulation by the Commission (except for household goods carriers), the elimination of entry procedures and certification is adequately handled in both bills. Both contemplate DOT jurisdiction over insurance and safety, a result which we support. There is some merit in continuing economic regulation over household goods carriers, given the unequal bargaining position of a typical householder who moves once in a lifetime.

STATE PREEEMPTION

Our shipper groups support uniformity in state standards as to registration of vehicles, taxes and highway operating criteria. We also support unlimited entry into intrastate operations and flexible or free market ratemaking.

Both the DOT and Moody bills address these issues. The Moody bill creates a category of motor carriers, so-called "national carriers" which serve three or more contiguous states; and provides that a state may not regulate the rates or service of such carriers. Less boldly, the DOT merely requires the Secretary of Transportation to conduct and complete an investigation of economic regulation of trucking by state agencies within two years.

We believe that some action should be taken *now* to make state deregulation conform more closely to the federal pattern. It is a confusing hodgepodge for shippers to have to continue to face lack of flexibility in shipping freight under circumstances where (1) a carrier which handles its interstate freight can not handle its intrastate freight or (2) an agreed set of interstate rates is negotiated with a carrier, but a different set of non-negotiable rates applies in each state.

PRESERVATION OF INALIENABLE RIGHTS

Shippers are concerned about preserving their basic right to collect for loss or damage caused by motor carriers in transit. The Carmack Amendment (49 U.S.C. 11707) adopted the general common law rule of full liability in order to abate carrier's attempts to insert disclaimers of liability, in whole or in part, in their tariffs or on their bills of lading as traps for the unwary; and to eliminate the vagaries of different courts reaching varying results on liability issues. It is important to understand that the Carmack Amendment was not "economic regulation" but simply the

Congressional codification of the judge-made rule of law on loss and damage liability. It is a basic right that shippers are entitled to as, once they turn their freight over to the carrier, they can no longer protect if from theft and damage. It simply puts the responsibility where it belongs, upon the carrier as the custodian or bailee of the goods. Therefore, any "deregulatory" bills should be carefully drafted and scrutinized so that, in an excess of zeal, they do not undertake to destroy shippers' right to legal recovery for loss and damage. Nor should such deregulation bills eliminate the bill of lading requirement, which is simply a uniform contract of carriage or bill of rights between shipper and carrier.

The Moody bill reflects that it was drafted against a background of considerable input from shippers, including our two groups. The DOT bill is not responsive to the concerns just noted. The Moody bill retains the Carmack provision as to full libability for loss and damage; properly retains the bill of lading as the basic shipping document; and makes it clear that motor carriers may not insert deductibles (which are actually mini-disclaimers of liability) on their bills of lading and that when limited or so-called released value rates are published, the carrier must also maintain a full value rate at a higher level. These are simply welcome clarifications of the current statute governing loss and damage liability. We enthusiastically support these provisions of the Moody bill.

Conversely, the DOT bill would repeal the Carmack standard of full liability and the requirement that a bill of lading receipt be given for the freight; and it would also eliminate released rates. We believe that this reflects an excess of zeal under the guise of deregulation. As noted, by sorting out authoritatively in advance the legal standards of liability, Congress was not indulging in economic regulation. There is no occasion for repealing in a "deregulation bill" over one hundred years of common law as developed by the courts.

DOT's transmittal suggests that by repealing the Carmack liability standard, it would leave loss and damage liability up to each state. This is inherently unworkable as to interstate traffic because each shipment traverses two or more states. Whereas the Federal statute now establishes uniformity, DOT's bill would submit each shipment to multiple standards of liability en route. Which state's law would set the standard of liability on a transcontinental movement which passes through a dozen states? If there is any case to be made for uniformity of state laws through preemption, no better case exists than that for a uniform liability standard on interstate freight.

Finally, the Moody bill is also commended for its preservation of certain other rules which exist to preserve some order and uniformity in shipper/carrier dealings, viz., rules for loss and damage claim-filing, credit rules, overcharges, insurance and C.O.D., until such time as DOT may review and change them. These are areas of desirable uniformity in shipper/carrier dealings and it is believed that the industry and its customers benefits considerably from having such rules of the road continued in place, at least on an interim basis. Again, conversely, the DOT bill contains no provision to preserve them on an interim basis.

As this Committee moves forward with the important task at hand, these shipper groups will make ourselves available so that informed choices can be made in drafting a bill which will best respond to the concerns of the shipping public.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. Proponents of the collective ratemaking system allege that this system provides shippers with reasonable, easily understandable rates and that without collective ratemaking, shippers would be greatly hampered in their pricing activities. What is your opinion of this view?

Answer. In order to provide a clear response to this question, it is necessary to contrast the situation as to rate bureau rates before and after the Motor Carrier Act of 1980. Prior to 1980, the LTL and minimum charge rates were as published in each rate bureau's class rate tariffs and, with only minor exceptions, all shippers freight moved at such list prices. As of that period, it was correct to describe the collective ratemaking system as providing "reasonable, easily understandable rates." In fact, up until 1980, our Conferences had provided an endorsement for rate bureaus based on such considerations.

Since 1980, the tariff situation has changed completely. Today most LTL shipments do not move at the rate bureaus' list price rates. Many carriers now publish their own tariffs. The others publish their discounts in the bureau tariffs, either as general discounts from the collectively-made rates, as shipper-coded discounts, *etc.* A substantial volume of LTL freight also moves under contract rates which no longer are required to be published. This was facilitated by the change in the 1980 Act which allows the common carriers also to acquire contract carrier authority. Thus, it is no longer possible to look at the rate bureaus' tariffs to determine the rates being paid by all shippers or even most shippers. Their rates serve as a base or list price from which individual negotiations take place.

The last part of your question asks whether "shippers would be greatly hampered in their pricing activities" if collective ratemaking were terminated. The short answer is "No". As will be further discussed in the answer to your next question, the rate bureaus progressively move the list prices upward by one or two general percentage increases per year (which percentages, incidentally, have exceeded the rate of inflation in each year since 1980). As a result, collective ratemaking has the effect of raising the one-on-one negotiated discount rates. Without collective ratemaking, rates would not be increased as much or as often as they are now. In voting for the termination of collective ratemaking, shippers are willing to trade off the benefit of ridding themselves of those increases for the collateral result that there would be more individual tariffs and more rates published in toto than there are now.

The basic issue which separates carriers and shippers is that the carriers want to continue to collectively increase rates and the shippers want an end put to this intrusion into the competitive market. All the other "issues", such as whether there would be more or less tariffs and rates without collective ratemaking, are insignificant. Of course, the rate bureaus could continue in existence as tariff publishers in any event.

Question. It has been argued that the collective ratemaking system helps to keep rates low and that trucking rates have increased at a lesser rate than they did prior to the enactment of the 1980 Act. What has been NASSTRAC's experience in this area?

Answer. Anyone who is arguing that "the collective ratemaking system helps to keep rates low" is either completely misinformed or is trying to kid someone. The main purpose and raison d'etre for collective ratemaking right now is to raise the rate level by one or two general percentage increases per year.

As for the second part of the question, the fact "that trucking rates have increased at a lesser rate than they did prior to the enactment of the 1980 Act" is in no sense attributable to the collective ratemaking function of the rate bureaus. It is a function of the disinflation during the Reagan years: up until 1980, there was double digit inflation and double digit rate increases based on a pass through of cost increases. Since 1980 the rate bureaus have broken out of bounds and have been collectively setting rate increases at about double the rate of inflation.

This is probably the most serious indictment of the rate bureaus. Their function has changed since 1980. Whereas prior to that time they functioned to make rates and pass through inflation cost increases they have now risen to the challenge of the otherwise free market in ratemaking by collective increases which are designed to offset the revenue impact of negotiated rate reductions by increasing rates to preserve their overall profit margin intact.

The table on the following page clearly shows this new phenomenon. In April, 1980, the nine major general commodities rate bureaus increased rates by a combined total of 119 percent of the expense increases they showed in their Justification Statements filed with the ICC to support the increases. The general rate increases filed by the same rate bureaus for the year 1985 showed a drastically different pattern. In the aggregate, the rate bureaus took general increases in 1985 which were 219 percent of their expense increase.

[Dollar amounts in thousands]

Bureau	Rev. Inc	Exp. inc.	Rev. Inc. as percent of Exp. Inc.
April 1, 1980 rate bureau increases:			
CSMFB	$85,814	$99,910	86
C&SMFTA	69,445	51,270	135
ECMCA	147,498	133,902	110
MAC	93,427	59,140	158
MWMFB	204,541	136,430	150
NEMRB	27,263	19,969	137
PITB	4,214	4,872	87

Bureau	Rev. Inc.	Exp. Inc.	Rev. Inc. as percent of Exp. Inc.
RMMTB	159,645	144,175	111
SMCRC	155,576	146,735	106
Total	947,423	796,403	119
Year 1985 rate bureau increases:			
CSMFB	57,413	23,028	249
C&SMFTA	48,226	18,811	256
ECMCA	107,752	61,145	176
MAC	56,520	19,803	285
MWMFB	114.472	46,173	248
NEMRB	17,802	6,490	274
PITB	1,793	610	294
RMMTB	133,798	68,985	194
SMCRC	152,228	69,644	219
Total	690,004	314,689	219

Source: Justification Statements for general increases filed by each rate bureau with the Interstate Commerce Commission.

The CHAIRMAN. Mr. Henderson.

Mr. HENDERSON. Thank you, Senator.

I will indeed try to be very brief, in fact perhaps even faster than 5 minutes. It has been a long day.

Let me identify myself. I am the executive vice president of the Private Truck Council, and I have with me today, Richard Schweitzer, our legislative counsel.

The Private Truck Council is a separate independent group of private carriers from the ATA. And also, listening to all of the testimony this morning, we have heard so many speakers up here talk about the effects of deregulation and the trucking industry.

Largely, many of the witnesses have a different view than we do, and we support deregulation, and they are speaking as if they represent the whole industry. And yet, better than 66 percent of the trucking industry is private carriage. Not all of them are members of the Private Truck Council. But if you look strictly at the truck population out there and all the trucks on the road, 66 percent of them are defined as private carriers.

And whether they are members of our organization or some other organization, all of them have benefited from the 1980 act and, for reasons which I will quickly summarize here, support the 1985 Truck Deregulation Act.

So the industry is a big industry, and you have heard perspectives this morning from certain segments of it and it sounds as if they are speaking for everybody. The trucking industry is corporate America and it is a whole myriad of shippers of companies and industries.

And so it is based upon that and that viewpoint that I make my quick comments today. We support total elimination of antitrust restrictions and collective ratemaking activities for interstate carriers and the retention of safety and insurance regulations through the DOT.

But most importantly, we seek preemption of State regulatory authority over truck transportation that is now regulated in intrastate commerce, and our remedy for that is the national carrier concept which was discussed in great detail earlier this morning by

Congressman Moody and I think a couple of other witnesses, and so I will not say anymore on that.

But we feel that is the best remedy to deal with the State restrictions which we are now plagued with. And just to give you a few examples, 35 States prohibit intercorporate hauling, another 30 prohibit single source leasing, and so on down the line. In other words, they are interfering with the rights of private carriers to fully benefit from the 1980 act, and we badly need that relief.

Furthermore, we do not think, I believe as Commissioner Gradison said and a few other witnesses, that we need another 2-year study on the problems with intrastate economic regulation. I think we know what the evidence is there. The best thing to do is to decide what the best means is to resolve that problem.

As far as the Motor Carrier Administration proposal, which is a hot topic with the ATA, and Mr. Donohue has spoken about it many times, yes, perhaps there is a need for that, but our support for that is contingent upon total deregulation.

We do not want to risk creating another agency in the DOT before we have wiped off the statute books the last vestiges of truck deregulation, or we fear what we are going to see is another regulatory body born and growing within the DOT, and we would be very much opposed to that and we see that would be harmful to private carriers.

And switching to another topic, it is related to the subject of deregulation. When we talk about taxes and productivity and some of the whammies that the entire industry has suffered over the years—I am going to repeat what a number of other witnesses have today said. We have suffered a great tax increase and we need the productivity relief, such as the 48-foot-long and the 102-inch-wide trailers.

The DOT has not done its job, in our estimation, in really enforcing that properly with the States, and we would suggest that there needs to be a federal definition of "reasonable access." You cannot have a half-mile in New York and three-quarters of a mile in Virginia and so on down the line.

And we think that a federally established minimum standard of 10 miles from the network would allow many private carriers and all carriers, for that matter, sufficient ingress and egress for the larger equipment without granting unrestrained operations.

Many of our people do not have terminals within 2 miles of the interstate. They have customers in 3 to 10 miles, in fact even beyond. But we are willing to compromise and start with a reasonable 10-mile limit.

And finally, on the question of safety, it is a problem. And, Senator, I applaud you for all of your work in this area, and frankly I think we would be faced with many of the problems we have today in safety whether we had deregulation or not.

The beltway is 300 percent over capacity, and so on and so forth. We know the MCCSAP program is, fortunately, I think, now being funded at its proper level. We know the CVSA and stepped-up inspection—there are a number of ways we have to go at the safety problem, and we would be sitting here today talking about that whether we were considering deregulation or not.

Thank you.

[The statement follows:]

STATEMENT OF RICHARD HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA

Mr. Chairman and Members of the Subcommittee: I am Richard Henderson, Executive Vice President of the Private Truck Council of America (PTCA); with me today is Richard Schweitzer, PTCA Legislative Counsel.

PTCA is pleased that you have chosen to move so quickly on the issue of further trucking deregulation by scheduling these expedited hearings. We are also extremely pleased that the Department of Transportation has responded to your challenge by submitting deregulation legislation to the House and Senate. It is apparent now that the administration is firmly in the ballgame on the side of further regulatory reform.

PREEMPTION OF STATE ECONOMIC REGULATION

As you know, PTCA support, total elimination of entry restrictions and collective ratemaking activities for interstate carriers, and the retention of safety and insurance regulation through the Department of Transportation. We also seek preemption of state regulatory authority over truck transportation that is now regulated as intrastate commerce. To these ends, we will discuss provisions in both H.R. 3222 and DOT's draft legislation.

PTCA supports the "national carrier" concept established in H.R. 3222 as the most expedient means of deregulating at both the state and federal levels. In H.R. 3222, a carrier that holds itself out, provides under continuing agreements, or transports property by motor vehicle in three or more contiguous states is considered a "national motor carrier" or "national private carrier". A national carrier, either private or for-hire, is not subject to entry, rate or route regulation by either the Interstate Commerce Commission (which, under H.R. 3222, will no longer have jurisdiction over motor carriers of property, except household goods carriers) or state regulatory bodies.

The preemption of state economic regulatory authority would extend to movements that begin and end in a single state, now regulated as intrastate commerce. The national carrier concept alters this regulatory analysis to assess the total operations of an individual carrier, rather than simply a single movement. If a carrier's total operations cover three or more states, then that carrier is considered for all purposes to be in interstate commerce, regardless of whether the carrier sometimes handles individual shipments that may not cross state lines.

A carrier analysis provides for a cleaner determination of regulatory jurisdiction; it is a readily identifiable standard that will be understood by carriers and regulators alike. There will no longer be shifting regulatory jurisdiction over a carrier's operations with one regulatory body for in-state movements, another for out-of-state movements. We will no longer face the questions now presented in Armstrong World Industries, Inc.—Transportation Within Texas—A Petition for Declaratory Order, MC-C-10963, in which the Commission is trying to determine whether or not shipments of carpet from Georgia to points in Texas are intrastate, and therefore subject to regulation by the Railroad Commission of Texas, simply because they stopped in transit for an extended period in a Dallas warehouse. If Armstrong's carrier is considered a national carrier, the shipments from Dallas to points in Texas would not be subject to state or federal regulation or rates, routes or service.

The DOT bill does not go far enough in preempting state regulatory authority. DOT's legislation simply states that the state agencies may not step in to regulate interstate traffic that is no longer regulated by the ICC. PTCA urges this committee to push preemption beyond strictly interstate movements.

For private carriers, the greatest benefits arising from deregulation have been the opportunities to obtain supplemental for-hire authority, to trip lease equipment and drivers to regulated carriers, to engage in compensated intercorporate hauling, to establish separate transportation subsidiaries, and to lease equipment and drivers from a single source. While these options are all currently available at the federal level, state restrictions still prohibit private carriers from using these options for intrastate shipments. For instance, 35 states prohibit compensated intercorporate hauling; 30 states prohibit single source leasing; and 43 states still regulate entry, rates and routes for supplemental for-hire authority.

Thus, for private carriers to receive the full measure of productivity gains available in a deregulated environment, there must be a strong preemption clause in any deregulatory bill reported by this committee. If not, many private carriers will have to forego the operating flexibility available at the federal level, since most fleets combine interstate and intrastate movements for individual vehicles. Most carriers would simply comply with the most restrictive set of applicable regulations rather than separating interstate movements from those within a single state.

ELIMINATION OF REMAINING LEASING REGULATIONS

H.R. 3222 would retain, under Department of Transportation jurisdiction, the leasing regulations contained in 49 CFR Parts 1057 and 1058, and the ICC policy statement in Ex Parte No. MC-122 (Sub-No. 2) Leasing of Equipment and Drivers to Private Carriers. These rules refer to trip leasing of equipment and drivers to regulated carriers and leasing of equipment and drivers by private carrier from unregulated sources (e.g., a leasing company, owner-operator, or other private carrier).

The DOT bill, on the other hand, would eliminate these vestigial leasing regulations since there will no longer be any economic regulatory function in the ICC. Lease of equipment and/or drivers would be governed by commercial law, either under the common law or the Uniform Commercial Code. PTCA supports the DOT approach to this issue.

If there are no entry restrictions on for-hire carriage, there should be no restrictions on the provisions of a leasing arrangement between any two entities. There would be no need to retain any regulatory distinction between private and for-hire carriage since for-hire operations would be opened up to all heretofore unregulated carriers. Terms and conditions of leasing contracts are better regulated by the marketplace (with dispute resolution in the courts) than in the DOT.

MOTOR CARRIER ADMINISTRATION PROPOSAL

PTCA will support the establishment of a Motor Carrier Administration within the Department of Trasnportation as envisioned in H.R. 3222 only if coupled with complete deregulation of the trucking industry. There is a real need to centralize economic research, safety regulation, vehicle design and other functions related to trucking within a single agency in DOT. In particular, there is a tremendous need to increase the funding, personnel and visibility of the Bureau of Motor Carrier Safety; this could be part of this new administration.

However, PTCA is absolutely opposed to any retrenchment on economic regulation, and sees a Motor Carrier Administration as a possible threat to the newly won operating freedoms that private carriers now enjoy. Should ICC jurisdiction over trucking terminate, our members do not want to see any entry restrictions or collective ratemaking procedures simply transferred to a new administration in DOT.

Thus, we will support the establishment of a Federal Motor Carrier Administration only in conjunction with elimination of entry rules and antitrust immunity for collective ratemaking, and statutory transfer of authority to DOT only for enforceing safety and insurance "fitness" requirements. Only in this way will private carriers ensure that regulation does not result from this administrative change.

RETENTION OF CARMACK AMENDMENT

PTCA's Board of Directors voted to take no position on whether to retain the absolute liability of common carriers for lost or damaged freight as codified in the Carmack amendment. There are two schools of thought on the issue; one, small shippers especially need the protection of Carmack in a deregulated environment; and two, PTCA should not seek deregulation on one hand and regulatory protections on the other. Thus, PTCA will support deregulation legislation regardless of whether it include a Carmack provision.

BACKHAUL ALLOWANCE

PTCA supports extension of the backhaul allowances for the food and grocery industry contained in Section 8 of the Motor Carrier Act of 1980 to all industries, as proposed in H.R. 3222. The provision would allow a manufacturer of any good to grant a discount to customers who picked up the shipment at the producer's dock rather than take delivery. Prior to 1980, such discounts subjected producers to possible claims under preferential pricing regulations of the Federal Trade Commission.

The 1980 Motor Carrier Act removed the cloud of illegality for discounts by food and grocery companies; H.R. 3222 seeks to extend permission for these allowances to all producers. We urge this committee to include such a provision in its bill, so that American business may include the presence or absence of transportation charges in the price of an item without fear of prosecution.

ACCESS TO ROUTES FOR LARGER VEHICLES

Private carriers still cannot enjoy the productivity gains granted in the Surface Transportation Assistance Act of 1982. Although the STAA allowed the use of 48-foot long semitrailers, 28-foot long double trailers and 102-inch wide vehicles, and asserted that states may not deny "reasonable access" to the network of routes established for these larger vehicles, many states continue to restrict access in a way that prevent carriers from getting to and from the network routes.

Private carriers are particularly hindered by restrictive access policies since they haul their goods from manufacturing facilities to customers' warehouses or retailing facilities. Points of manufacture and delivery are commonly in rural areas, far from the national network and beyond the state-authorized access limits.

We think a federal definition of "reasonable access" would go a long way toward easing the problem of conflicting and overly restrictive state access rules. A federally-established minimum standard of 10 miles from the network would allow many private carriers sufficient ingress and egress for the larger equipment without granting unrestrained operations. In addition, setting the definition as a minimum would not affect those states that currently have a more liberal access policy.

DEREGULATION AND SAFETY ISSUES

The issue of economic deregulation of the trucking industry is not about safety; it is about governmentally-established oligopolies and price fixing. There is nothing unique about the trucking industry that requires it to be regulated as a public utility any longer. When first established, economic regulation was to protect service to shippers; the means to accomplish this objective was a guaranteed rate structure and limit on competition. Now, however, shippers are clamoring for an end to government "protection," but the carriers want to retain their privileged market shares and guaranteed rates.

Deregulation of trucking does not necessarily mean that safety will be adversely affected. While some carriers may cut back on maintenance or operate longer hours in order to compete, the way to address the issue is to enhance enforcement of the existing safety regulations, not to restrict competition.

The most effective way to bolster safety enforcement is to use the Motor Carrier Safety Assistance Program (MCSAP) to increase the number of roadside inspectors and encourage states to adopt the Federal Motor Carrier Safety Regulations. Under MCSAP, some 1500 state inspectors have been trained in federal roadside inspection procedures, and some 51 states and territories will participate in the program in fiscal year 1986.

Although the House appropriated only $14 million out of the $30 million authorized for MCSAP in FY 86, we are working to have the Senate appropriate the full authorization level in order to give this program the funding necessary to substantively improve truck safety.

CONCLUSION

I appreciate the opportunity to present this testimony, and look forward to accelerated consideration of these issues by the committee.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. You noted in your testimony the need for preemption of state regulations affecting interstate truckng operations. You also noted that while you support total deregulation, the Administration's bill does not go far enough towards preemption. In your view, would total federal economic deregulation, without meaningful preemption, be of any real assistance to private carriers?

Answer. Total federal economic deregulation, without meaningful preemption of state regulatory authority, would be only of marginal assistance to private carriers. The federal regulatory reforms that have been implemented, either legislatively or administratively, since the late 1970's have to a large extent solved the productivity problems that plagued private carriers before that time.

There are still vestigial federal regulations that need to be eliminated:

the process of applying for authority is an unnecessary exercise with no real analysis of the existing service or the new service to be offered;

the tariff filing requirement is an administrative burden on the carriers that simply adds to the cost of transportation without providing reliable pricing information (since discounted rates are now the rule rather than the exception); in addition, the situation wherein a trustee for a bankrupt carrier may legally collect balance due bills on negotiated but unfiled discounted rates is truly an example of regulation run amok;

federal exempt commodities classifications are arbitrary distinctions that further no regulatory policy; and

collective ratemaking, even to establish "benchmark" rates that may be negotiated downward, violates free market principles and does not protect shippers or consumers; in many instances collectively established rates result in artificially high shipping costs, particularly for smaller shippers unable to negotiate substantial discounts from the published tariff.

However, in order to achieve significant further benefits from regulatory reform, strong preemptive language must be included in deregulatory legislation. Our testimony on oversight of the Motor Carrier Act listed the 43 states that still regulate entry into intrastate for-hire carrier markets, the 19 states that grant antitrust immunity for collective ratemaking on intrastate routes, the 35 states that prohibit intrastate compensated intercorporate hauling by private carriers, and the 30 states that prohibit intrastate single source leasing.

These restrictive state regulations inhibit efficient operations by private carriers since private fleets are unable to separate operations into interstate and intrastate segments. Thus, options available at the federal level must be foregone because some individual movements using those options may begin and end in a single state.

Should the Interstate Commerce Commission approve our request to modify Ex Parte No. MC-122 (Sub-No. 2) by allowing private carriers to trip lease trucks and drivers from owner-operators, leasing companies, and other private carriers, PTCA's members would have just about all the operating flexibility they could need at the federal level. Yet state regulations require private fleets to endure empty trailer miles and less efficient operating procedures because of their restrictions on leasing arrangements and supplemental for-hire authority.

As shippers, PTCA members also see preemption of intrastate regulations as the key to any deregulation initiative. Closed entry and lack of rate competition keep intrastate rates substantially higher than rates for comparable interstate shipments in many states (our oversight testimony included a comparison chart of per-mile rates for interstate and intrastate shipments originating in Texas, for example). Because discounting of rates is illegal in most states with strict regulatory systems, shippers are not free to negotiate with carriers as is possible with interstate shipments. The ability to negotiate reduced intrastate freight costs is the single greatest potential benefit in the entire deregulatory arena.

Finally, PTCA views federal deregulation and preemption of state laws as a one-time opportunity. Should Congress decide to end ICC regulation without a substantial preemption provisions, it would be many, many years before shippers and private carriers could get state trucking regulations on any congressional agenda. We see the present initiative as our best chance for any meaningful reform at the state level.

Question 2. You indicated in your testimony a federal definition of "reasonable access" for large trucks authorized for nationwide use by the Surface Transportation Assistance Act of 1982. On September 20, however, the Subcommittee heard testimony from the American Automobile Association about potential safety problems associated with the larger trucks. What has been the Private Truck Council's reperience in this area?

Answer. On November 7, the PTCA Board of Directors voted unanimously to clarify the Council's policy regarding reasonable access for the longer, wider and heavier equipment authorized by the Surface Transportation Assistance Act of 1982. The new policy, as included in the Council's 1985-86 Legislative and Regulatory Agenda, states: "PTCA should seek a uniform federal definition of reasonable access based on commercial points of pickup and delivery."

A minimum standard of access to and from the established national network and "commercial points of pickup and delivery" would permit private carriers to use 48-foot long semitrailers, 28-foot long tandem trailers, 102-inch wide vehicles, and 80,000 pound gross loads on the shortest direct route to and from the national network and customers' loading docks. Our members do not intend that such language would entitle them to through-rate access on any road in the country. They simply want the law to allow them to enjoy the productivity benefits contained in the size and weight provisions of the the STAA, in return for which they are paying a heavy toll in increased federal highway user fees.

The experience of our private fleet members operating the larger equipment over the last 18 months (and long before, on many state roads) has categorically been good. Accident frequency rates for longer, wider and tandem trailers have not differed significantly from smaller, single-trailer combinations. While PTCA cannot abasolutely document the accident frequency rates per million miles for each type of equipment, discussions with many of our member fleet managers who are using the larger and heavier equipment have uncovered no hidden detriment to safety.

At least one state has reached the same conclusion via a series of tests for twin trailers. Attached[1] is a copy of an article from the October 7, 1985 edition of Transport Topics stating that Alabama will now permit 50-foot, 102-inch semitrailers on 12-foot-lane highways, which includes all but county roads in the state. In addition, the new statute allows tandems up to 28 feet, 6 inches on highways designated by the highway director and approved by the governor. The story also asserts, "Three experimental two-lane test routes for twin trailers in use for the last nine months a virtually accident-free record, with state agency and public approval . . ."

Access to commercial points of pickup and delivery would not be as broad as the access already granted by statute to household goods movers, who may take 48-foot semitrailers and 28-foot tandems into residential areas to "points of loading and unloading." Surely any potential safety hazard caused by extending access to commercial pickup and delivery points is outweighed by the hazards of taking the equipment to residential loading and unloading points, yet there has been no outcry from state or federal highway safety or enforcement agencies regarding the ongoing use of larger vehicles by household goods movers.

PTCA members believe strongly that they have been paying the increased federal use taxes since April, 1983 without receiving the associated productivity benefits of increased trailer capacity because of restrictive state access policies. Our members do not believe that expanding reasonable access to include access to terminals and distribution centers, as proposed in H.R. 3222, would be of much help. One, most of our private fleet members do not have distribution centers where uncoupling of tandems or off-loading of larger semitrailers could be readily accomplished. Two, the states will determine what constitutes a "distribution center" for purposes of the statute (just as now the Federal Highway Administration allows the states to set their own access policies). We expect that most states will be overly restrictive in defining "distribution center," and would prefer language that would not allow FHWA to let the states exercise great discretion in developing access rules. PTCA believes that access to commercial points of pickup and delivery would restore the quid pro quo of higher taxes for heightened productivity that was the underpinning of the STAA.

The CHAIRMAN. Thank you. Mr. Sweeney, this is a shippers' group, is that correct?

Mr. SWEENEY. Yes, customers of the truckers.

The CHAIRMAN. And Mr. Henderson, the Private Truck Council of America, this is—well, who or what is the council?

Mr. HENDERSON. Our members are corporate members whose primary business is something other than transportation. We are separate and independent from the ATA. We share similar objectives with the Private Carrier Conference. We represent the same kinds of industries. I do not, frankly, know what the overlapping of membership is.

The CHAIRMAN. But basically it is company-owned trucks?

Mr. HENDERSON. That is right.

The CHAIRMAN. So if a manufacturing company has its own fleet of trucks, like for example a grocery chain has a fleet?

Mr. HENDERSON. Yes.

The CHAIRMAN. Thank you very much.

Senator Exon.

Senator EXON. Mr. Chairman, thank you.

Mr. Sweeney, you made a very convincing argument for the free enterprise system that we all believe in so very much. And basically, I think the bottom line was that we have enough competition and competition will take care of itself and everybody will benefit. Is that kind of a bottom line conclusion on what you testified?

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[1] Retained in the Committee files.

Mr. **Sweeney**. Yes. The industry can stand competition like any other industry.

Senator **Exon**. Now, I am not sure that—while I agree with your basic premise, I come from an extremely rural State. The deregulation of the airline industry has not been good for rural Nebraska. The people are paying more—and I emphasize, more and considerably more—for air transportation than they did before.

Telephone deregulation has been another disaster for rural sections of our country. Up and up and up in costs. While I like what you said, do you feel that the Government has any responsibility whatsoever in such things as truck transportation, that is possible only because of the network of highways that we have in this country?

Do you think that there is no consideration whatsoever that should be given to the fair and as nearly as equal possible distribution of materiel that is carried by the trucks? Or, putting it another way, are you concerned, as I am, about what would happen to the less populated parts of our great country should we have the total free enterprise system that you so well advocated?

Mr. **Sweeney**. Well, let me start out quickly by saying that, as far as the ability of a carrier to serve a small town or whatever, I mean, this has been enhanced by the 1980 act and this would be somewhat of an additional enhancement. In other words, it is for anyone to get a new truck, but the more deregulation the more it really helps the small town.

Now, the second question is a lot harder. You are talking about the pricing, you are talking about the little guy that pays more than the big guy. The little company pays more than the big company. Well, you really have that today.

I mean, these carriers and shippers are making individual deals, they are making individual rates. So that is where you are today. Now, the only difference is—and I hate to keep hitting on the poor rate bureaus. But the point is, when they publish, let us say, a 6-percent rate increase, it affects the little guy's rates and the big guy's rates. So that is why we feel that if we can get rid of the rate bureau, which is the artificial factor, then you have got a more normal situation for everybody and everybody's rates are going to be a little bit lower.

And that is why the truckers are so worried, because they are afraid their rates are going to go down, but both the little guy and the big guy will wind up with lower rates.

As far as the position of the little guy and the big guy, they are in that position today. They are bargaining one on one with the carrier. And the big guy, just like the truckers say, the big guy is getting a bigger discount. The little guy is either getting no discount or a small discount, depending upon where he is and what he is shipping and that kind of thing.

But we are not proposing to change that. That is already out there today. That is not on the table.

Senator **Exon**. Well, you heard the testimony by Senator Meiklejohn from Colorado, which was basically along the line that I am trying to pursue, outlining what this has done to rural America. I mean, I am confident that total deregulation of the trucking industry is probably good for metropolitan areas and where we have more centralized populations. I am not convinced it is so good for other parts of America.

But in any event, you have stated your position extremely well. I suppose also you would, carrying out the same logic, you would endorse the recent proposal by the new Director of the Office of Management and Budget that we should open up first-class mail to private carriers as well. Would you?

Mr. SWEENEY. That sounds like a very good idea to me. I do not know what my clients' position is, but that sounds like a good idea.

Senator EXON. Well, that drives us even further apart in our conclusions, because I think you and I would agree that if that ever takes place the cost of delivering mail to the rural areas and the basic principle of rural free delivery would go out the window.

So I guess that, while I agree with your general thesis, I am concerned about the effect that this could have on the less populated sections of our country.

Mr. SWEENEY. Well, I recognize, you know, that cases can be made for Government subsidies here and there and whatever on their own merits. But all I am saying is, putting aside the question of whether or not the Government is willing to subsidize, there are more carriers out there, there is more equipment out there, there is more service out there, with deregulation than there is with regulation.

What regulation does, it limits the number of people. It is like the taxis in New York. Go up there and try to find a taxi. You have to buy a $30,000 or $40,000 medallion to get out in the streets so you can carry people around. As a result, when we go up there and we look for a cab we cannot find one.

If it was unregulated there would be more taxis out there. The same thing with the trucks.

Senator EXON. Your testimony with regard to the rate bureaus raising the rates, is that not as much an indictment of the people who have served on that ratemaking board as it is the system itself?

Mr. SWEENEY. Well, to be fair to everybody, the carriers themselves serve on the boards. There are a number of carriers in each part of the country that join the rate bureau, and then they have a committee and they sit down and somebody proposes a rate increase and they kick it around the table.

And you are going to run into situations where a carrier does not need a rate increase—I mean, let us say I am Mr. Imperatore, who was here earlier, and I am making a lot of money, I have an 80 operating ratio. The poor guy next to me has a 110 and he is worried about making his payments. So I will say, OK, I will go along with the rate increase to help Charlie over here, because otherwise he is going to go into bankruptcy.

The rest of it is the ICC, which has not been doing a very good job on reviewing rate increases. They are even sort of letting them get away with rate increases at double the national inflation rate. Their rates go up faster than inflation, and the ICC lets them do it.

So it is not all the rate bureaus' fault. The ICC is cooperating with them.

Senator EXON. But then I guess you basically agree with my point that part of the problem at least in this regard is that the people who should be holding that down have not been doing their job.

Mr. SWEENEY. There is no question about that. But we see no sign that they will do their job.

Senator EXON. Thank you very much, Mr. Sweeney.

Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much.

I also want to thank Mr. Carty and Mr. Zegar for their willingness to submit their testimony.

Next we have a panel: Mr. Fred Smith, Competitive Enterprise Institute; Mr. David Lifschultz, Lifschultz Fast Freight, who I understand is represented by his Washington counsel; Mr. Robert Corber, Steptoe & Johnson, Washington; Mr. James Harkins, executive director, Regular Common Carrier Conference, American Trucking Associations; and Mr. David Coburn, Regional and Distribution Carriers Conference, American Trucking Associations.

Mr. Smith.

STATEMENTS OF FRED SMITH, PRESIDENT, COMPETITIVE ENTERPRISE INSTITUTE; JOSEPH H. DETTMAR, ON BEHALF OF LIFSCHULTZ FAST FREIGHT, INC.; ROBERT J. CORBER, ATTORNEY; JAMES C. HARKINS, EXECUTIVE DIRECTOR, REGULAR COMMON CARRIER CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, INC.; AND DAVID COBURN, REGIONAL AND DISTRIBUTION CARRIERS CONFERENCE, AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. SMITH. Thank you. I am going to have to leave right after I present my testimony. I thank you for letting me be first.

The CHAIRMAN. I cannot understand that. It is only 10 after 2. The day is young.

Mr. SMITH. I have rescheduled this now three times. I have lost track.

I am the president of the Competitive Enterprise Institute, a pro-market public interest group created to foster serious consideration of free market perspectives by those debating public choices.

I think from the discussion that we have been hearing that that perspective is sorely needed today. Ostensibly, the bills that are before you would further deregulate the transportation industry. Unfortunately, they will not. True, they would eliminate unneeded and unnecessarily burdensome existing ICC regulations, and those in my opinion should be eliminated.

But those residual regulations are economically trivial. They have not prevented the industry's rapid transition toward a virtually fully competitive environment. The testimony you have heard today, starting out with Secretary Dole and continuing on through the day, has supported that contention.

On the other hand, the new burdens, the new regulatory burdens that this bill would impose on the industry, the antitrust regulatory burdens, are economically significant. They are equally unneeded and they I think would impede the transportation industry, specifically small- and medium-sized carriers and shippers.

What you have been hearing today and I think a lot of the confusion before in some of the earlier questions is that there really are two major types of economic regulations being discussed today. About half the witnesses today are nostalgic about the old days of ICC regulation. They liked those, but they oppose the new antitrust regulations. The truckers, most of the trucking groups today, the Teamsters, fall into that camp.

The other half of your witnesses today would eliminate the residual ICC regulations, but they would substantially expand the antitrust regulatory authority over the trucking industry. This group includes many of the shipper groups and most of the establishment organizations within the administration, particularly those that would benefit from the expansion of their own authority, Justice and the Department of Transportation.

Neither of these groups in my opinion really represent a deregulation thrust. They basically are for some forms of regulation; they oppose other forms of deregulation in the trucking industry.

I think I would like to speak for full deregulation. I think the trucking industry needs neither the residual ICC regulation nor any new form of antitrust regulation, and I do so not only on theoretical reasons, but for very practical reasons.

I think in this area there is a demonstrated ability to trust competition rather than any group of bureaucrats, no matter how well intended. And antitrust can be dangerous to the health of an economy, to the health of a sector. Consider the antitrust ideologs' mugging of Ma Bell. We were supposed to deregulate the telecommunications industry, that is, eliminate the FCC regulatory authority over many of the rates and so forth.

But the Justice Department's naive view that economic efficiencies of a vertically integrated industry were trivial, are irrelevant, got in the way. Justice believes in a kind of a chainsaw model of competition: industries look better segmented into little pieces. The results of that I think are confusing a lot of people.

We did not deregulate the telephone industry. We deregulated on one hand and we re-regulated on the other, and it is that latter that caused the problem.

You can agree or disagree about the extent to which that applies to the trucking industry. But I think it is incumbent upon this committee to at least look at the growing research criticizing the economic impact of antitrust regulations.

There has now been formed in this administration a working group that is pulling together the various elements of the Government concerned with antitrust to comprehensively review the need for reforming the antitrust laws. Certainly, before you proceed to extend the antitrust regulatory authority over any segment of the economy, you should at least await the findings of that commission. It is coming this fall, so you certainly are going to have time.

Moreover, there is no data that has been presented today and no data that I know that exists that rationalizes any need to extend antitrust regulatory authority. Secretary Dole quoted extensively today from the ratemaking study commission report.

My testimony makes extensive reference to the irrelevancy of that report. In a sense, it is like trying to understand St. Paul's teachings based on his attitudes prior to his conversion on the road to Damascus.

A lot has happened since the passage of the Motor Carrier Act and all of the study results that the Motor Carrier Ratemaking Study Commission cites are prior to the implementation of the Motor Carrier Act, and my testimony details that to a great extent.

In effect, there is some more information that you should see. The ICC recently, about a year and a half ago, looked at this antitrust immunity question in their *Ex Parte MC-172* hearings. I have appended my remarks in my testimony. I would like to add to the testimony the remarks of Chris Barnakoff, a staff paper prepared for the ICC, and a paper by Dennis Breen, if that would be all right.

In effect, when you look at these studies you see no empirical basis for extending the antitrust regulatory authority. The trucking industry is largely operating in a free market today. Voluntary collective ratemaking is working effectively. What we have today, Senator, is an experiment going on. For the first time almost in our history, we have a situation where we have neither coercive ratemaking nor a forbidden ratemaking ability.

We have a voluntary ratemaking situation that constitutes an interesting experiment as to how much regulation is really needed to promote consumer interests in a marketplace. The trucking industry is an ideal place for that experiment to take place. We do not need to preclude that now. I would like that experiment to continue.

[The statement follows:]

STATEMENT OF FRED L. SMITH, PRESIDENT OF THE COMPETITIVE ENTERPRISE INSTITUTE

I. INTRODUCTION—THE NEED FOR CONGRESSIONAL RESTRAINT

Mr. Chairman and Members of the Committee, my name is Fred L. Smith Jr. I am president of the Competitive Enterprise Institute (CEI). CEI is a pro-market public interest group created to foster serious consideration of free market perspectives by those debating public policy choices. I appreciate being invited to testify today on the Administration's transportation proposals. These bills would ostensibly further deregulate truckers, freight forwarders and brokers, and interstate water carriers from much of whatever residual regulation remains after the important and laudable legislative reforms which were passed in recent years by Congress.

However, I regret to report to you that, on balance, from the perspective of an advocate of full and free competition unrestricted by government intervention, the proposals, as they are presently drafteds, are more harmful than beneficial. The remaining few regulations which the proposals would eliminate, while admittedly unneeded and unnecessarily burdensome to those engaged in the business of transportation, are economically trivial and have not prevented the industry's rapid transition toward a virtually fully competitive environment. On the other hand, the new burdens imposed by the proposals—call it "reregulation"—are economically significant, equally unneeded, potentially greatly burdensome, especially to small and medium-sized carriers, and would, in fact, impede the competitive process.

Specifically, I urge you not to rush to impose the hodgepodge of statutes which constitute antitrust regulation on the transportation industry—both shippers and carriers—under the guise of deregulation. Antitrust regulation, at least as it is currently imposed on much of American business, has profoundly *anti*-competitive consequences. There is no policy justification for imposing this burden on companies making the movement from a heavily regulated and cartelized industry to a relatively unregulated and competitive environment.

It seems that everybody these days claims to support "deregulation." But deregulation has been seriously led off the track by the failure of some of its proponents to come to terms with a major component of modern-day economic regulation: the antitrust laws and the huge bureaucratic morass under which is exercised an almost unlimited discretionary authority to enforce the jumble of statutes pretty much as appointed officials see fit.

What happened to the move to "deregulate" communications is a pretty good case in point and a good indicator of what can be predicted to occur in transportation if what I call the "antitrust ideologues" get what they are seeking. For example, the rationale of breaking up AT&T prior to what was supposed to be the deregulation of telecommunications was based on the Justice Department's hopelessly naive view that the economic efficiences of vertical integration in this vital industry were either trivial or legally irrelevant.

To Justice it was literally "consumer be damned" as the possibility that consumers would be better off if AT&T were left alone to compete under a deregulated atmosphere of freedom of entry and exit was simply ignored. And even after the vertical, horizontal, and diagonal cutting up took place, leaving the industry somewhat like the victim of a chainsaw massacre, there is today no true deregulation because the regulators with their antitrust discretionary powers want to make absolutely certain that the competitive process takes a course consistent with their vision of what perfect competition should look like. The result is almost certain to be continued micro-regulation as bureaucrats persist in substituting their own values for the verdicts of consumers operating in the free marketplace.

Before turning to an examination of how letting the antitrust ideologues loose on the transportation industry would likely distort the competitive process there, in an optimistic note it should be pointed out that in recent years the applicability and value of antitrust regulations for a modern integrated world economy have received increasing criticism. Research by a growing number of economists and legal scholars suggests that much of the body of antitrust regulations has served consumer interests poorly and should be reformed.

Moreover, there is increasing evidence that the cumulative impact of criticism, centered especially on the charge that antitrust regulations impede the competitive position of U.S. industries in both domestic and international markets, is making inroads against longstanding conventional wisdom on the subject. I understand that recently the Administration has created a joint antitrust reform working group, including representatives from the Treasury, Justice, Commerce, and Labor Departments, the Office of Management and Budget, and the Council of Economic Advisors, to comprehensively review the antitrust laws and how they are actually enforced and to propose needed changes.

Pending that such needed review, or, indeed, without conducting one of its own, and given the lack of the slightest urgency in the present matter, surely a course of restraint would be wise counsel for Congress to take before imposing new regulatory burdens on transportation.

II. THE IRRELEVANCE OF THE RATEMAKING STUDY COMMISSION REPORT

By statute, the Reed-Bulwinkle Act (62 Stat. 472, codified, as amended, at 49 U.S.C. 10706), and by judicial interpretation under the Keogh Doctine (*Keogh* v. *Chicago Northwestern Ry*, 260 U.S. 156) a partial exemption from antitrust regulation has been extended the ICC-regulated surface transportation sector. Apparently, however, the conventional view is that relaxation of strict and restrictive entry and price regulations should be accompanied by the vigorous application of the various doctrines subsumed under the umbrella of antitrust enforcement.

Indeed, according to the transmittal letter from the Secretary of Transportation, dated September 12, 1985, it "is now time to take the necessary final steps to complete deregulation of the trucking industry." This sensible language is immediately followed by a call for "eliminating the antitrust immunity now enjoyed by the trucking industry. The evidence complied shows clearly that such immunity has raised rates unnecessarily and has not prevented undue discrimination." Only the "evidence and recommendations of the Motor Carrier Ratemaking Study Commission" are cited as the basis of this conclusion.

The trust is that today there is vigorous price competition in all areas of surface transportation, and that the data on which the Study Commission made its recommendations are simply not relevant to the issues which are yet to resolved. It is true that the Study Commission Report showed that the regulatory system which prevailed prior to the passage of the Motor Carrier Act of 1980 created the great inefficiencies and excessive rates one would predict from a compulsory government-enforced cartel. But the plain and simple fact is that its data collection period ended in May 1982, and its conclusions do not apply to the current deregulatory regime. It would be inexcusable to predicate the proposed statutory amendments concerning antitrust exemptions on its findings.

Much has happended in the past several years which should be taken into account. I will briefly list the actions taken by the ICC since the period studies by the

Ratemaking Study Commission Report to complete structural deregulation of motor carrier transportation:

TABLE 1.—DISCRETIONARY ICC DEREGULATION

Pricing

May 1982—No rate floors will be enforced by ICC.
May 1983—Tariff elimination for contract carriers.
July 1983—No new "revenue needs" rate standards.
August 1983—No standard rate pricing minima.
January 1984—Negotiable rate tariffs allowed.
February 1984—"Named shipper" tariffs allowed.
May 1984—Short Rates—"instant" tariffs allowed.
August 1984—Withdrawal of antitrust immunity refused.
August 1985—Credit terms regulation largely dropped.

Entry

July 1980—Operating rights applications broadened.
February 1981—Truck/rail intermodal competion initiated.
February 1982—Single Source Leasing deregulated.
October 1982—Private Carrier Leasing/fleet efficiency ok'ed.
December 1982—Rails allowed to enter trucking competition.
December 1983—Industry-wide permits for contract carriers.
November 1984—Master leasing agreements allowed.
November 1984—End of 30-day credit rule.

The conclusion must be that while the Commission Report may well have established that the old system or regulation should be replaced, as it was, it did not and, indeed, could not have analyzed the competitive environment which has gradually been put in effect since the Motor Carrier Act of 1980 was passed and implemented. It is, thus, highly inappropriate to use the Commission Report as evidence that the current limited antitrust immunity which exists in transportation leads to either higher prices, less efficient pricing patterns, or to "anticompetitive" price discrimination by carriers. Yet the advocates of reregulation through antitrust do precisely that, and, as far as I can determine, have been unwilling or unable to bring forward any credible argument to support their position. Where, for example, is the FTC's, or the Justice Department's, or DOT's analysis of the competitive effects of the deregulation implementation by the ICC which I have just listed?

It is precisely such an empirical analysis which should be undertaken prior to any changes in the current law being adopted. The best available theoretical work suggests that any anticompetitive effects of collective ratemaking in the transportation industry were dependent on entry restrictions and enforcement of price uniformity by the government. And the preliminary empirical work that I have seen suggests that cartel rates have not, in fact, been maintained in the presence of entry freedom, despite the continuance of voluntary collective ratemaking.

III. THE IMPACT OF ANTITRUST ENFORCEMENT OF TRANSPORTATION

Unleashing the full range of antitrust regulations and enforcement agencies on the surface transportation industry is an extremely dubious proposition. The uncertainties that such an imposition would place on the industry—for both carriers and shippers—are so large and even the most biased recitations of the benefits to be derived are so modest, that one wonders who, beside members of the antitrust bar and the regulators themselves, could believe they would be better off.

The transition period from a highly regulated to a competitive market has sufficient attendant problems by itself without legislatively imposing the additional burden of forcing the business entities involved to speculate and litigate at great expense over what is and is not legal under the must currently popularly view of antitrust.

After all, antitrust is in serious disrepute. Economic scholarship has become increasingly critical of antitrust enforcement policies. Many antitrust regulations once applauded by economists are now viewed as harmful to consumer welfare. Those in government charged with enforcing vague and overly broad antitrust statutes often claim to be influenced by the "new learning," and many business arrangements once banned by antitrust are now deemed to be legal as they are suddenly discovered to be both efficient, benign, and actually procompetitive.

Congress, however, has yet to endorse these policy changes, and the spectre is always there that the next set of regulators will engage itself in an antitrust witchhunt. And, in spite of the claims made by Justice, the negative climate for investment and entrepreneurial action created by the uncertainties of the law which has not and probably cannot be consistently applied over any substantial period of time, coupled with the risk of criminal prosecution and treble-damage private law suits, would outweigh any possible theoretical "welfare gains" from the withdrawal of current immunity. Outside of transportation, American industry finds itself victim of the chilling effect of past antitrust zealotry, and any number of efficiency- and competition-enhancing practices are left undone. Allowing true deregulation of a vital sector of the economy will permit no less than a national experiment as to whether market forces work more effectively than government lawyers to ensure a competitive environment.

Earlier, I listed numerous discretionary acts of the ICC to implement deregulation, and I cited the August 1984 decision not to withdraw antitrust immunity for carriers as an example. I urge you to study the record developed in that decision which I understand has been certified to you. I am also offering as an appendix my own testimony before the ICC. An especially important part of the record is an analysis of the issue by Dr. Chris Barnekov of Commissioner Frederic Andre's staff, dated August 6, 1984, which was circulated to the commission. If for some reason it is not part of the certified ICC record, I would be happy to supply the Subcommitte with a copy. I would characterize its most important finding as a substantiation of my argument that the Study Commission Report is best viewed as an indictment of ICC-enforced entry and pricing restraints rather than of antitrust immunity.

The ICC proceeding, Ex Parte No. MC-172, was instituted in October 1983 to determine whether the ICC should withdraw antitrust immunity for collective ratemaking on shipments weighing less than 1,000 pounds. The Commission also requested comments on whether antitrust immunity should be withdrawn completely from all motor carrier rate bureau activity. Over 60 comments were filed during the comment period, including highly instructive filings from the government agencies (DOJ and FTC) which would receive additional antitrust regulatory authority should the currently proposed legislation be adopted. Also instructive for an analysis of what the government would do if antitrust immunity were to be dropped is a speech by then Deputy Assistant Attorney General Douglas Ginsburg delivered before the New York City Bar Association on January 19, 1984, while the proceeding was pending. Mr. Ginsburg has been named to head up the Antitrust Division and generally viewed to hold an "enlightened" view of antitrust.

The Competitive Enterprise Institute has long contended that deregulation of the transportation industry should not mean the transfer of regulatory authority from one set of regulators, the ICC, to another, the FTC and the DOJ. Today, rates are no longer being set politically (i.e. by government prices-fixers, courts, or coercive cartels) but by market forces. But by imposing antitrust immunity on transportation, those who are displeased with the results of competition will once again be encouraged to appeal to the political process to coerce the behavior of their competitors. There is nothing in the history of the enforcement of antitrust to suggest that the new regulators would be more likely to be "good" regulators than was the old anti-market ICC. It is certain that they know much less about transportation.,

Fears of reregulation via antitrust are borne out by the statements emanating from FTC and DOJ. The effect on the ability of carriers to conduct joint-line hauling is a case in point, and it is clear that both of these agencies believe that much of the current trade practices in this area should be declared to be criminal activity. Passage of the proposed legislation would give these agencies the "green light" to move forward to force restructuring of the whole industry, raising costs of doing business, actually pushing the industry toward greater concentration, and making service to smaller communities more costly and less efficient.

The FTC predicts that under antitrust regulation some categories of joint-line agreements will continue to be lawful.

For example, consider a hypothetical bilateral agreement between carrier A, which carries shipments only from city 1 to city 2, and carrier B, which carries only from city 2 to city 3. Such an agreement could set a single price for joint carriage from 1 to 3, and allocate revenues between A and B, *normally* without incurring a *substantial* risk of antitrust liability. *In our view*, such an agreement would properly be analyzed as a partnership or joint venture, and, if significant efficiencies resulted, would be judged under a rule of reason analysis rather than a *per se* standard. In an *unconcentrated market*, the agreement would create little risk of antitrust liability. (FTC Comments, MC-172, December 12, 1983, p. 7; emphasis added.)

However, a more troublesome problem might be raised if carrier A also carried goods directly between cities 1 and 3, in competition with joint-line carriage by A and B. (p. 8)

And, as if to comfort the industry: Any remaining areas of uncertainty are likely to be transitional, and will be reduced over time by court decisions clarifying the types of activities permissible under the antitrust laws. (p. 5)

Such "assurances" that some joint-line ratemaking may, in the discretion of the FTC, remain legal are based on examples which bear no resemblance to real world facts. And, in any event, the chilling effects of the possibility of being chosen to bear the legal costs of "clarifying" the law "over time" virtually assure the eliminating of interlining traffic if antitrust regulation is imposed. And, indeed, this seems to be the goal of the antitrust ideologues.

Trusting the Department of Justice or the Federal Trade Commission to exercise sound decretion in this matter would be foolhardy. The above example from the FTC's Comments is sufficient to illustrate my point. Under the example, a jointline agreement between carriers A and B *might* be legal between cities 1 and 3, providing that neither A nor B offered a direct shipment. However if either A or B offered direct service between cities 1 and 3 (or had the "potential" to so compete), that is to say if there existed a cooperative agreement between two firms which "ought" to be competing, well, that would be illegal, unless, of course, the firms' attorneys could get economic efficiency arguments into evidence (over the government's objection citing the *per se* rule) and carry the burden of showing that the agency was clearly wrong.

Worse, according to the FTC, "if firms A and B entered into a rate agreement with other firms engaged in joint-line carriage" between cities 1 and 3 "their agreement would almost certainly be held *per se* unlawful" (p. 8). Even someone like Douglas Ginsburg, who often seems to understand many of the problems with antitrust regulation, is willing to state flatly that, "it would be unlawful for one group of carriers that provide a joint-line service between two points to agree on rates with another carrier or group of carriers offering a competing service between the same points." (New York Bar speech, p. 12) The clear implication of this foolishness is that each firm could select only a single interlining partner (joint venturer) for each city pair, and surely any carrier who had similar rate agreements with more than one "partner" would be, believe it or not, deemed *per se* guilty of monopolistic behavior.

In the past, of course, much interlining was forced on the industry because of the incomplete route authority granted by the ICC. But the proper response to this was to liberalize grants of authority, and this was done by the ICC at least by July of 1980. National grants of authority are available virtually for the asking. In their apparent zeal to gain regulatory authority over transportation, the FTC and DOJ ignore the fact that there simply is no longer any competitive problem in this area.

In any event, the example has nothing to do with the daily problems faced by carriers, who are normally intent on the efficient movement of cargoes and not on how to subvert the competitive process. With widespread authority now generally available, interlining today is simply a question of efficiency. Carrier A, Carrier B, and Carrier C might all have single-line routes to Cities 1, 2, and 3. Carrier A has a terminal in City 1 with 1,000 pounds going to 3; he ships it with B who has 10,000 pounds going the same way the same day. Two days later the reverse may happen, or A may send a truck directly two days and interline three. Why should the negotiations be made more complicated than already are if each carrier is free to compete by cutting prices when he finds it in his interest to do so?

Apparently both FTC and DOJ understand this when only two carriers are involved and only purely "end to end" routes are involved. Thus, in a statement similar to the FTC Comments quoted above, Mr. Ginsburg states that, "Carriers that interline freight between themselves in order to construct a through route for a particular shipment are partners, not competitors, with respect to that shipment." (p. 11) But, of course, the whole problem with the modern enforcement of antitrust regulations is that cooperative behavior can either be viewed as benign or anticompetitive at the whim of the regulator. It is not sound public policy, and there is no compelling reason to impose it on rapidly changing industry which is nowhere near the static economic equilibrium presumed by the economic pure competition models still believed in by those charged with trying to make sense out of the statutes.

A similar analysis would apply to attempts to impose antitrust on freight classfications, standardization agreements, price-making efficiencies, price "discrimination," and so forth. The key to competition is freedom of entry and pricing. Both exist now in law and if fact in transportation. It does not need to be reregulated.

IV. CONCLUSION

In trying to conjure up an image of just what FTC and Justice would be tempted to do to in reregulating surface transportation if they got the chance, I simply cannot resist in closing my remarks to refer to the similar process, much further along, whereby the Transportation Section of the Antitrust Division of the Department of Justice is making the rules and formulating the economic analysis for airline "deregulation." One of the burning issues faced there is what to do about the technological innovation of computer airline reservation systems. In as much as the political process was available to those who found themselves at a competitive disadvantage due to its intorduction by their competitors, it was only a matter of time before the Justice Department received allegations that two air carriers "dominated" the CRS "industry" and were engaged in "display bias, non-competitive pricing, and other practices that were harming competition in the airline industry." (Comments and Proposed Rules of the Department of Justice, CAB, November 17, 1983, p. 2).

I suppose will all know what has ensued is a myriad of detailed micro-regulations, and even serious calls for divestment of this technology have been made by various hired guns. I would not be surprised, in fact, if this were to be how the so-called problem is ultimately resolved. Antitrust is often a tool used by politically-minded businessmen to cripple competition.

But it is the economic analysis used to justify antitrust intervention in that case which is most instructive to the issue before us. As always in antitrust analysis the definition of what is meant by "market" determines the conclusion of the static equilbrium analysis which follows. A traveler, for instance, or a shipper, is generally not interested in the nationwide "market" shares of the relevant carriers, but rather in the individual city pair markets in a particular case. But all of this is ignored when antitrust economic analysis is employed by DOJ to justify their political interventions.

The concept of "market power" is often employed to invoke antitrust jurisdiction. To many this might mean the ability to effectively control specific factors of production, restrict outputs, and thereby charge a monopoly price. But to DOJ, "Market power can be defined as the ability of a producer profitably to maintain a price for its product that is nontrivially *higher* that the economic *cost* of providing it. In a fully competitive industry, *no firm is able to exercise market power, and the prices of the product closely approximate the economic costs of providing it.*" (Emphasis added; p. 34)

It was easy enough to establish that profits were being made by some and, since entry was judged to be difficult, not because it was any longer being restricted by government action but because of the capital investment required, it was easy to close the argument. Further development of the CRS is now strictly regulated and is almost certain to be stifled.

But all this, of course, is very bad economic theory that virtually no one believes in. There is no equilibrium in the CRS "industry"; it is a new product. The function of profits is to attract capital not to signal regulators. Government policy makers surely know this, but apparently the institutional constraints are such that nobody can act on what they know to be true.

The anntitrust laws need to be reformed, just as the other attempts to regulate economic activity by government regulation needed reform. Much progress has been made toward deregulation. Now is not time to reverse course, especially in an area as vital as America's transportation industry.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question 1. In your testimony, you noted your concern about the current antitrust laws. In what ways should this system be reformed?

Answer. It has long been my concern that the practical impact of the antitrust laws on the economy has been largely anticompetitive in the most meaningful sense of that term. Evaluation of the economic impact of the various statutes which comprise antitrust has too often not proceeded from an analysis of their actual nature or of the ways they are actually enforced by government agencies and construed by the courts. Rather, it is their announced purpose to "breakup monopoly power" which, without further examination, is seen to justify their existence and even preclude objective analyis of how they in fact operate in the real world.

Gradually this is changing, and for the first time American economists are beginning to seriously analyze antitrust. Yale Brozen, Professor of Economics at the University of Chicago and a member of the Advisory Board of the organization I head, the Competitive Enterprise Institute, has stated the conclusions of what is called the "new learning" in economics about antitrust quite succinctly in a forthcoming article for a Harvard journal:

> The statements of purpose in the antitrust acts and the applications made of the law are often at odds with each other. Antitrust operates in the name of keeping competition alive, yet it frequently suppresses competition. Antitrust is supposed to strike down restraints of trade, yet it often strikes down trade expanding activities and practices. Antitrust is supposed to free enterpreneures, yet it constrains them. It has itself become a constraint on trade.

Professor Brozen in by no means the first or only respected economist to come to this conclusion. The understanding that there is little that is socially useful and much that is harmful in antitrust regulation is making inroads against the long-standing conventional wisdom to the contrary. The problem for those who, like myself, advocate reform is that antitrust continues to enjoy widespread support with policymakers and opinion leaders.

Nonetheless, there is increasing evidence that the cumulative impact of academic criticism, centered particularly on the charge that the antitrust regulations impede the competitive position of U.S. industry in international markets at home and abroad, is having some impact. Recently, for example, mostly due to the courageous efforts of Secretary of Commerce Malcolm Baldrige, the current administration created a joint antitrust reform working group, including representatives from the Treasury, Justice, Commerce, and Labor Departments, the Office of Management and Budget, and the Council of Economic Advisors. The stated purpose of the group is to review the antitrust laws and to propose needed reforms.

Developing a political consensus about the need for legislative reform is no easy task, as I am sure you are quite aware. There is always resistence to change, and nowhere is this more true than in government. Consequently, it is with great hesitation that I would presume to advise those engaged in the political process as to the most pragmatic course to take to secure a needed reform. Nonetheless, certain interim steps towards a comprehensive reform of antitrust regulation can be suggested as desirable in and of themselves. These proposals have attracted a substantial amount of support in circles generally favorable to antitrust reform:

1. Abolishing the treble-damage award in priviate actions;
2. Modifying the joint and several liability rule in private actions;
3. Modifying the "incipiency" provisions in the Clayton Act;
4. Allowing economic efficiency and consumer welfare analysis as an affirmative defense in all antitrust litigation (abolishing per se prosecutions);
5. Allowing prevailing parties in private actions to recover their attorney's fees;
6. Decriminalizing a whole range of activities which are clearly competitive such as vertical price maintenance, exclusive and reciprocal dealing agreements, "predatory" pricing, and any other pricing or production policy or ancillary agreement that can only create economic efficiencies.

There are no policy considerations of which I am aware for not adopting all of the above reform proposals. But even these reforms would not resolve the fundamental problems attending the current enforcement of antitrust.

It is clear that the vigorous prosecutorial enforcement of current antitrust dogma causes firms to restrain output and results in prices to consumers being higher than they otherwise would be. The primary intellectual error that causes this public policy "failure" is the Market Concentration Doctrine. For example, following the Justice Department's initiation of an antitrust action against IBM in 1969, the evidence is great that the company restrained its output and kept its prices higher than it otherwise would have in order to reduce its market share and avoid being broken up by the government. Its market share fell from 58 to 40 percent. When the case was finally dropped in 1982, IBM lowered its prices, and added capacity and market share. Virtually every major antitrust case in the last forty years has had a similar anticompetitive impact.

Indeed, the mere possibility of antitrust litigation has led to similarly perverse competitive consequences throughout American industry, contributing to our inability to compete internationally. Witness the behavior of GM throughout the last twenty years; its decisions not to aggressively seek productivity-enhancing innovations, cost controls, and greater market share, which were almost certainly due to the very real threat of antitrust prosecution, constitute a much more satisfactory explanation of the current market than the prevalent notion that Americans are by nature incapable of competing with the Japanese system.

In my view, a complete rethinking of the goals of antitrust and what ought to be meant by a prohibition on the "restraint of trade" is in order as an integral part of the move for economic deregulation. Some years ago Alan Greenspan assessed the case for antitrust in this way:

To sum up: The entire structure of antitrust statutes in this country is a jumble of economic irrationality and ignorance. It is the product: (a) of a gross misinterpretation of history, and (b) of rather naive, and certainly unrealistic, economic theories,

As a last resort, some people argue that at least the antitrust laws haven't done any harm. They assert that even though the competitive process itself inhibits coercive monopolies, there is no harm in making doubly sure by declaring certain economic actions to be illegal.

But the very existence of those undefinable statutes and contradictory case law inhibits businessmen from undertaking what would otherwise be sound productive ventures. No one will ever know what new products, processes, machines, and cost-saving mergers failed to come into existence, killed by the Sherman Act before they were born. No one can ever compute the price that all of us have paid for that Act which, by inducing less effective use of capital, has kept our standard of living lower than would otherwise have been possible.

Question 2. You expressed concern in your testimony about deregulation proposals which would subject trucking industry collective ratemaking activities to the antitrust laws. Outside of this issue, what is your opinion of total economic deregulation of the trucking industry?

Answer. There was never any economic justification for the pervasive governmental regulation of the trucking industry in the first place. The history is clear that the legislative purpose of regulation in this area was to protect the railroad industry from rising trucking competition. The methods used to do this were uniformly to restrict entry, inhibit innovation, coercively maintain prices above competitive levels, and prohibit virtually every competitive practice, including discounts, rebates, exclusive dealing, and every other imaginable way of increasing market share and gaining operating efficiencies.

To the extent that the proposed bill supported by the Department of Transportation (1) codifies post-1980 deregulatory decisions by the ICC, (2) eliminates remaining ICC rate-fixing and entry restraining power, and (3) abolishes tariff filings, it is a proposal which would be supported. Nonetheless, the bill as submitted by DOT in September is, on balance, a bad bill precisely because its antitrust provisions would inflict a substantial amount of needless damage on the trucking industry. Worse, it would end a valuable experiment in antitrust reform where a virtually completely deregulated industry has been at least partially shielded from antitrust prosecution.

If we are ever going to rid ourselves of the fallacies of antitrust, experiments like this need to be allowed to take place and not, as the Antitrust Division of the Justice Department prefers, suppressed. Since there is no empirical evidence that the current deregulated environment in trucking is leading to concentrations of "market power," even as naively defined in Justice Department briefs, the present situation regarding the application of antitrust should be allowed to continue. Consequently, if it proves impossible to fashion a trucking deregulation bill that can gain sufficient political support for passage without the current antitrust language, the best course would be not to have additional legislation at this time. A "deregulation" bill that, in fact, would serve to reduce actual market competition by subjecting the industry to antitrust regulation is "reregulation" and in the best interest of nobody.

Your judgment as to whether a more positive bill might be possible is certainly better than mine; however, I would hope that it would be possible to advance the full deregulation of the trucking industry, and I would like to assist your efforts to that end.

The CHAIRMAN. Thank you, sir.

Next we have whoever is speaking for Mr. Lifschultz.

Mr. DETTMAR. Mr. Chairman, my name is Joseph H. Dettmar. I am representing Lifschultz Fast Freight, Inc. I am appearing today in lieu of Mr. David Lifschultz, who is preparing the company's terminal in New York City for the hurricane expected this afternoon.

Lifschultz Fast Freight is a class I motor carrier of general commodities, with its headquarters in New York City. It is primarily a carrier of general commodity, less-than-truckload shipments. It operates in the Northeastern United States and between points in the Northeast and points on the west coast.

It is a family owned and operated business. It has been in existence since 1899. It earns approximately $50 million per year from transportation activities.

The point we want to make to the subcommittee today is that larger carriers in the general commodity, LTL sector of the trucking industry are engaging in predatory pricing, which has contributed to the destruction of numerous regional carriers similar to Lifschultz.

We feel that the Interstate Commerce Commission and the Department of Justice, which have the authority to forestall such practices, have refused to take the necessary actions to police and halt them. Private antitrust actions, although theoretically available, are too expensive and too time-consuming to be an effective tool for smaller carriers or for carriers of Lifschultz' size.

An examination of this situation ought to be initiated as part of the subcommittee's review of what is happening to the trucking industry under deregulation and in considering whether to take further legislative action in this area.

In order to give a little background into this situation and into why it has come about, we have to take a look at the structure of the trucking industry, I think the subcommittee has heard a good deal of testimony today on that. There is now approximately 31,000 for-hire trucking companies in the United States. Most of these carry specialized freight and fall into the so-called truckload area.

A separate and distinct area of the trucking industry encompasses less than truckload carriers of general commodities. We believe there are approximately 250 class I motor carriers in the LTL sector right now. Since the enactment of the Motor Carrier Act of 1980, this sector of the industry has come to be dominated by a small number of large carriers.

Those carriers, as a number of speakers have noted today, are growing, while the overall number of carriers in the LTL sector declines. There were 407 class I LTL carriers in 1979 and about 250 in 1984. This contrasts sharply with the increase in the total number of for-hire carriers under deregulation, from 17,000 in 1979 to about 31,000 today. So the truckload sector has increased substantially.

So we have to ask ourselves, why has the number of companies in the LTL sector decreased while those in the rest of the industry increased? Lifschultz believes this is because larger LTL carriers have squeezed their smaller regional competitors with deep price discounts in individual markets, which smaller carriers are unable to meet.

Discounting is a widespread practice. Some of the discounts are below any reasonable measure of the cost of providing service. Discounts in excess of 50 percent to large corporations are subsidized by undiscounted rates to smaller shippers. I think Senator Meiklejohn and Mr. Imperatore both alluded to that practice today.

The ICC and Justice have expressed skepticism that these discounts amount to predatory pricing and they have refused requests to take action in this area. They do not take charges of predatory pricing seriously because they believe that the structure of the trucking industry does not afford any incentive to that kind of behavior. They take the position that the industry has fewer nonregulatory barriers to entry and that a predatory strategy just would not work because if carriers were to subsequently drive prices up, new entrants would come in.

But the facts about the industry do not support that position. There are significant nonregulatory barriers to entry in the LTL sector of the trucking industry, and we think this has been demonstrated most clearly by the decrease in the number of carriers in that sector since the enactment of the 1980 act.

If entry into the LTL sector was all that easy, we would have seen the same influx of new carriers into the general commodities sector that we have seen in the truckload sector. But that has not happened. What we have seen instead is that the carriers that were already big in the late seventies have grown to nationwide status and a number of the regional carriers, as has been discussed today, have gone out of business.

In addition, this committee, in a study that it commissioned by Policy and Management Associates before enacting the Motor Carrier Act, also talks about the existence of barriers to entry into the LTL sector and the need for vigorous antitrust enforcement under deregulation. We think that that is the kind of enforcement that we have not seen.

We ask that the subcommittee reexamine the conventional wisdom expressed by the ICC and Justice that the structure of the trucking industry does not encourage predatory pricing. The General Accounting Office is presently undertaking an examination of this and other issues related to predatory pricing in the trucking industry, and we think that effort deserves support.

Lifschultz believes that no new legislation should be enacted until this problem is investigated and the situation is resolved. Vigorous price competition should and will exist in the trucking industry. But fostering this competition should not be confused with tolerating predatory activity which will in the long run reduce the number of competitors and the vigor of competition and pave the way for higher prices for trucking service.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF DAVID K. LIFSCHULTZ, VICE CHAIRMAN, LIFSCHULTZ FAST FREIGHT, INC.

Good morning. My name is David Lifschultz. I am the Vice Chairman of Lifschultz Fast Freight, Inc. I would like to express my thanks to the Subcommittee for allowing me to testify today at this hearing on the economic deregulation of the trucking industry.

Lifschultz Fast Freight ("LFF") is a Class I motor carrier of general commodities with headquarters in New York City. It is primarily a carrier of less-than-truckload ("LTL") shipments. LFF operates in the Northeastern United States and between points in the Northeast and points on the West Coast, via Chicago and other points in the Midwest. LFF is a family-owned and operated business, founded in 1899, which together with its affiliated companies earns about $50 million per year from transportation activities. LFF conducts freight forwarding as well as trucking operations.

The point I want to make to the Subcommittee today is that larger carriers in the general commodities, LTL sector of the trucking industry are engaged in widespread predatory pricing which has contributed to the destruction of numerous regional carriers such as LFF. The Interstate Commerce Commission and the Department of Justice, which have the authority and the responsibility to prevent such practices, have refused to take action to halt them. Private antitrust actions are too expensive and too time-consuming to be an effective tool for smaller carriers. A vigorous investigation of this situation should be initiated as part of this Subcommittee's review of what is happening to the trucking industry under deregulation. In addition, adequate safeguards against predatory pricing must be established as part of any further legislation affecting the trucking industry.

In order to adequately describe this situation and the reasons why it has come about, it is necessary to take a look at the structure of the trucking industry. There are now approximately 31,000 for-hire trucking companies in the United States. Most of these carriers haul "specialized" freight, i.e., heavy machinery, liquid and solid bulk products, agricultural commodities, building materials, etc., in truckload lots, and are usually known as truckload ("TL") carriers. In this sector of the trucking industry a truck picks up a single truckload (a truckload is usually considered to be 40,000 pounds) shipment at origin and carries it to its ultimate destination. There are a large number of small and mid-size firms in this sector of the industry. By and large it appears to be an industry where small carriers may compete effectively with large ones.

A separate and distinct sector of the trucking industry, however, encompasses those carriers which haul "general" commodities, i.e., a mixture of different kinds of shipments in a single truck. Such shipments are customarily tendered to trucking companeis in less-than-truckload lots. Shipment sizes in the LTL sector vary from a couple hundred pounds to more than 10,000 pounds. Trucking companies in this sector of the industry operate by picking up a large number of small shipments at various points, usually in pickup and delivery vehicles, and carrying them to a central terminal. There they are sorted and segregated into combinations of shipments which together will fill an entire truck. The shipments are then loaded onto a single truck for the "line haul" portion of the transport, which may be hundreds or thousands of miles. At the end of the line haul movement, the truck delivers its shipment to another terminal. There the shipments are unloaded and reloaded, along with shipments from various other line haul vehicles, into smaller vehicles for delivery to their ultimate destination.

Customarily, the commodities shipped in LTL service are manufactured goods. The LTL sector of the trucking industry is thus distinguished from the truckload sector by the requirements for extensive package handling at origin and destination and the requirement for a network of terminals and pickup and delivery systems.

There are presently 250 Class I (revenues exceeding $5,000,000 per year) motor carriers in the LTL sector of the trucking industry. Due to the necessity of maintaining terminals and operating a network of pickup and delivery as well as line haul services, most trucking companies that provide LTL service earn revenues of at least $5 million per year and thus are classified as Class I motor carriers. Although the 250 LTL carriers constitute a small fraction of the total number of regulated motor carriers, they account for one-third of the total tonnage and almost two-thirds of the total revenues of the regulated sector of the trucking industry.

The LTL sector of the trucking industry, particularly since deregulation in 1980, has come to be dominated by a small number of large carriers. Those carriers are growing while the total number of carriers in the LTL sector declines. Concentration in the LTL sector of the trucking industry has increased significantly since 1980, from 407 Class I carriers in 1979 to 250 in 1984, according to figures compiled by the Interstate Commerce Commission and the American Trucking Association. This decline in the number of LTL carriers contrasts sharply with the increase in the total number of ICC-certified trucking companies under deregulation, from approximately 17,000 in 1979 to 31,000 today.

This pattern of increased concentration in the LTL sector does not square with many of the predictions of these who favored deregulation in the trucking industry. Those predictions were that deregulation would afford increased opportunities for smaller and mid-size carriers to enter this industry and compete with the giants who dominate it—Roadway, Yellow Freight, Consolidated Freightways and a few others.

Why has the number of companies in the LTL sector decreased while that in the rest of the industry increased? I believe it is because larger carriers have squeezed their smaller regional competitors with deep price discounts in individual markets which the smaller carriers have been unable to met. Discounting is a widespread practice. Some of the discounts are, I believe, below any reasonable measure of the cost of providing service. Giant discounts in excess of 50 percent to multi-billion dollar corporations, many of which are stong advocates of deregulation, are subsidized by small discounts to small shippers, resulting in price discrimination.

Large, nationwide LTL carriers have an advantage over regional carriers when it comes to discounting. They may cut rates sharply in a particular region, even below cost, and subsidize those losses by their earnings in other parts of the country. Smaller carriers which depend upon that market as a major source of their revenue are unable to draw on other revenues to offset their losses. They have no choice but to absorb them. Most smaller carriers are unable to do so for very long, and must close down their operations.

The advantages accruing to national carriers versus regional carriers in part reflect actions that took place under regulation. Labor negotiations in the 1960s produced a wage scale that placed a disproportionate burden of driver costs on short hauls. At the same time, collective ratemaking in the LTL sector established rates that favored longer hauls. One might have expected that the onset of trucking deregulation in 1980 would have eased this situation. To the contrary, the cost and revenue bias in favor of long haul operations have left smaller regional carriers dangerously exposed to price cutting under deregulation.

The Interstate Commerce Commission and the Department of Justice have expressed skepticism that these discounts constitute predatory pricing. Both agencies have refused requests to initiate corrective action in this area. The ICC, in a decision issued August 26, 1983, in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, refused to establish standards to police predatory and discriminatory pricing practices in the trucking industry. That decision reflected earlier refusals by the ICC to use its authority to aggressively investigate and inhibit predatory pricing in the trucking industry; see Petition for Declaratory Order—Lawfulness of Value Discount Rates by Motor Common Carriers of Property, 365 ICC 711 (1982) (the "Discount Rates" decision). In its decision in Ex Parte No. MC-166 the ICC said, at p. 11, that both the DOJ and the FTC support our "Discount Rates" conclusions. They emphatically state that because the motor carrier industry has few non-regulatory barriers to entry a predation stragety—should it ever be attempted—is unlikely to harm either competition or shippers, as no monopoly can result.

The Antitrust Division of the Department of Justice has also refused to initiate action to investigate allegations of predatory pricing. In a letter to me dated September 25, 1984, Mr. Elliot M. Seiden, Chief of the Transportation Section of the Antitrust Division, refused my request that the Antitrust Division investigate discounting practices in the trucking industry. Mr. Seiden said in part, . . . the Department does not believe that market conditions in the trucking industry are conducive to single-firm anti-competitive conduct, such as predatory pricing, tying, price discrimination, and exclusive dealing. With entry barriers so low, it is difficult to see how an individual firm can obtain market power to maintain a rate above the competitive level for a significant period of time. Without such market power, shippers and ultimately consumers benefit from the lower discount rates and—if rates temporarily rise above the competitive level—they are protected from sustained periods of supracompetitive pricing by the likelihood that new firms will enter the relevant market.

Mr. Seiden expressed this position in public at a speech before the Public Utility Section of the American Bar Association on March 14, 1985.

In summary, I think it is a fair statement that neither the ICC nor the Department of Justice take charges of predatory pricing seriously because they believe that the structure of the trucking industry does not afford any incentive to that kind of behavior. The facts about the LTL sector of the trucking industry do not support that belief, however. There are significant non-regulatory barriers to entry in the LTL sector of the trucking industry.

This has been readily demonstrated since 1980 by the decrease in the number of carriers in the LTL sector. We have not seen the entry of new Class I carriers into this sector of the industry, and we have not seen many instances of substantial growth by small carriers. Rather, we have seen the expansion of carriers that were already among the largest in the late 1970s into nationwide carriers today. If entry into the LTL sector of the trucking industry were as easy as the ICC and the Justice Department say it is, the LTL sector of the trucking industry would have seen the same influx of new carriers that the truckload sector has seen. It hasn't.

A significant increase in concentration in the LTL sector of the trucking industry under deregulation was predicted in a study commissioned by the Senate Committee on Commerce, Science and Transportation and published in June, 1978, entitled "The Impact on Small Communities of Motor Carriage Regulatory Revision." The study was prepared by Policy and Management Associates, Inc., of Cambridge, Massachusetts, and was published by the Committee.

The Commerce Committee study, on page 121, states: There are clear advantages in long haul LTL operation accruing to large firms. These advantages are not scale economies in the conventional sense, but are marketing and coordination advantages, most apparent in long haul LTL markets where extensive coverage is a critical marketing feature.

The study predicated, on page 122, that "in light of these costs and regulatory considerations, one would expect that with deregulation, short haul LTL carriers would remain fragmented while long haul LTL carriers would become more concentrated due to either scale economies or marketing advantages . . . *the exact pattern of concentration would depend on specific aspects of deregulation and on the vigor and nature of antitrust enforcement.* In general, however, industry characteristics would encourage development of large geographically dispersed heavily networked firms specializing in LTL freight subject to antitrust activity. One would expect (after a lengthy transition period) a number of national LTL carriers all heavily networked and limited in interlining. Concentrated networks would probably be formed through mergers and acquisitions to achieve the broadest coverage in the most expeditious manner possible. . . ." (emphasis added)

The study went on to say, on page 122, that: *Barriers to entry in the long haul LTL market would be very high under deregulation*—a new firm would require an efficient terminal system and a broad scope of operation to compete effectively. The threat of a structure conducive to anticompetitive behavior would certainly be present. However, *the means to combat formation of such a structure are currently vested in the Department of Justice and the Federal Trade Commission* ("FTC"), which oversee concentration and merger activity in most industries (Emphasis added).

Thus, the Commerce Committee study noted that the structure of the trucking industry does permit both increased concentration and anti-competitive activity.

CONCLUSION

During the debate over trucking deregulation that led to the enactment of the Motor Carrier Act of 1980, the availability of the antitrust laws was often cited as a reason why regulation could be eliminated. As I have noted, however, the Department of Justice has expressed the belief that no predatory pricing exists or can exist in the trucking industry. Private antitrust actions are too expensive and too time-consuming to be a sueful remedy for an individual trucking company. This was recently illustrated by the case of an antitrust suit by a motor carrier, Clipper Express, against the Rocky Mountain Motor Tariff Bureau and its members. It took Clipper more than 13 years of litigation—and, I am told, the expenditure of millions of dollars—just to bring the case to trial. That sort of procedure is no help at all to carriers such as LFF. We simply cannot sustain that sort of burden, or anything approaching it.

I ask that this Subcommittee, in evaluating the effects of deregulation on the trucking industry and in considering whether to enact new legislation, investigate predatory pricing in the LTL sector of the industry. The ICC and the Justice Department have the authority and the responsibility to use their resources to investigate claims of predatory pricing and to stop it when discovered. We have not seen such an enforcement commitment by either agency. The Congress should promote vigorous enforcement activity by both agencies on this issue. In addition, the Subcommittee should reexamine the "conventional wisdom" expressed by the ICC and Justice that the structure of the trucking industry does not encourage predatory pricing. The General Accounting Office is presently undertaking an examination of this and other issues related to predatory pricing in the trucking industry. That effort deserves support.

Finally, I believe that no new legislation should be enacted until this problem of predatory pricing is investigated and curtailed. Vigorous price competition should and will exist in the trucking industry. But fostering this competition should not be confused with tolerating predatory activity which will, in the long run, reduce both the number of competitors and the vigor of competition and pave the way for higher prices for trucking service.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You expressed concern about predatory pricing practices in the trucking industry. Do you have any specific estimate of the extent to which these pricing practices are occurring?

Answer. We believe that the extent to which predatory pricing exists in the motor carrier industry is massive. There are two major areas where it occurs. One is cross-subsidized territorial predation where profits earned on tariffs published by Rocky Mountain Motor Tariff Bureau ("Rocky Mountain"), largely on transcontinental movements, are used by national carriers to destroy their more efficient regional rivals. The second is through national carriers raiding the smaller regionals of their large accounts by offering discounts of 50% to 60%, which is substantially below the marginal cost of producing the service for which the rate is charged.

It is important to review about 35 years of rate bureau history to understand the massive distortions that were wreaked on the industry. In the 1950s the coast-to-coast transportation market in less-then-truckload shipments was characterized by heavy loads going westbound. Most of these westbound trailers returned empty, because the West Coast had not developed much industry to fill eastbound loads. As the 1950s progressed into the 1960s, industry grew on the West Coast, and the eastbound empties of the early 1950s began to be filled with industrial freight. It is vital to an understanding of this that in the 1950s the Interstate Commerce Commission cited the empty eastbound backhauls as justification for allowing motor carriers to charge higher westbound rates. As the eastbound loads began to fill in the late 1950s and 1960s, the rate of profitability in the Rocky Mountain bureau rose as it continued to take the same increases as the other rate bureaus.

Starting in the early 1960s the Treamsters' wage increases were imposed disproportionately on short-haul regional carriers. Yet, despite these higher cost increases their rate increases were, on average, no greater than those of the long-haul national carriers whose rates were published by Rocky Mountain, and sometimes were less. The small number of large Rocky Mountain carriers, therefore, began in the 1950s and 1960s to increase in profitability. So as not to show the ICC excess profits on their overall operation, they began to hold down the profits on their regional operation to average their high longhaul profits with low short-haul profits. The right way for them to have done this would have been to reduce their Rocky Mountain rates and increase their short-haul rates to produce an even level of profitability on their overall operation. But this would have helped faster, more efficient regional carriers to similarly prosper.

Regional carriers are more efficient than larger, nationwide carriers because they are closer to their costs and have fewer breakbulk terminals. For example, when Lifschultz Fast Freight transports a shipment between New York City and Chicago, Illinois, it travels just from its Manhattan terminal to its Chicago terminal. A competing large national carrier, however, has a shipment route from a Manhattan (or Maspeth, or Brooklyn) satellite terminal to a Harrisburg, Pennsylvania breakbulk terminal, then to an Illinois breakbulk terminal, and then to a Chicago satellite terminal. The large national carrier's four terminal transfers are a lot less efficient than Lifschultz's two terminal transfers.

The large national carriers, therefore, purposely sought to destroy the smaller regionals by reducing profitability in the regional area by rigging the rates in the regional area below adequate profitability. To demonstrate the extent of this destruction in the eastern central market, there were 27 major eastern central competitors in 1960 while in 1979—before the 1980 deregulation bill—there were only 7 or 8.

Since 1980, when there were about 407 Class I carriers, about 38% of these less-than-truckload motor carriers have been destroyed in all regions, so the number remaining is 250. Since the same rate bureau distortions enacted by the nationals continued to exist, their post-1980 discount policy of setting a flat 20% or 30% discount for all territories—and they exercised price leadership for the discounts—maintained the former territorial distortions. Therefore, a good many of the 157 destroyed carriers were trapped regionals destroyed not because they were less efficient but because they were trapped in a territory dominated by low rates established by national carriers which cross-subsidized their operations by more profitable operations in Rocky Mountain. Since 1950, but especially since 1980, this massive form of predatory pricing practices existed.

The other form of predatory pricing involves the practice of large carriers granting 50% to 60% discounts to the large "bread and butter" accounts of small carriers, producing rates under cost, or by attacking hub centers of small carriers with 50% discounts for all accounts of the small carrier's hub. The objective was to eliminate smaller competitors by reducing their volume, creating a huge, uncovered overhead burden or by disrupting their hubs. Such actions constituted a purposeful effort to destroy competition and restrain trade.

Question. Outside of your concern about predatory pricing, what is your view of the effects of trucking industry regulatory reform to date and the prospects for total deregulation?

Answer. Since the predatory problems discussed in the answer to question one are worsening in the present market, and seeing that the term "deregulation" seems to be interpreted in the market as a license to destroy, more deregulation enacted by Congress at this time would have catastrophic effects on our industry. It would give an aura of sanction to the predatory pricing now prevalent in the marketplace, and the destruction of regional carriers would accelerate. The failure of the Department of Justice to enforce laws against predatory pricing has tragically jeopardized certain productivity benefits such as eliminating circuitous routes, allowing private carriers to fill empty backhauls, etc., and may lead to the old stiff regulatory system, inasmuch as the benefits of the 1980 Motor Carrier Act are being more than offset by the wholesale predatory destruction of small, more efficient carriers. In other words, the present pact of destruction and oligopolization of the market will lead to a new, stiff regulatory bill within five years unless the Congress or the Department of Justice moves to end destructive, predatory pricing in the motor carrier industry. And it will come on the heels of 80% to 90% of the less than truckload carriers being destroyed, and about 200,000 Teamster members being put on layoff or permanent severance. if we consider each union employee as also three or four dependents, we're talking about a million people being dislocated over a short period. Their cries are beginning to be heard in Congress.

The CHAIRMAN. Mr. Corber.

Mr. CORBER. Mr. Chairman, I appreciate the opportunity to appear and present my views. My name is Robert J. Corber. I am a practicing lawyer in the field of transportation and a former member of the Interstate Commerce Commission.

The first point that I make in my prepared statement is that the trucking industry has been racked with so many changes in regulation since the late 1970's, and these changes have been so frequent and so numerous, that it has not had an opportunity to absorb all of the effects of the change.

When you add on top of that the financial difficulties which do exist in the industry and are demonstrated right on up into the first quarter of this year, that this is not the time for further deregulatory legislation, until there is a period of relative stability in which the effects of these changes can be evaluated.

And the changes go right into last year, the elimination of consideration of single line ratemaking and collective ratemaking areas, for example. The changes are recent, as I say, and frequent, and until there is some period of stability in which the effects of those changes can be determined, it is not an appropriate time to introduce further destabilization in this industry, in my opinion.

My greater concern, and I want to spend most of my time on the question of collective ratemaking and elimination of antitrust immunity for that form of ratemaking. The difficulty I have with the proposals is that they are based upon a view of circumstances that existed before the Motor Carrier Act of 1980, and in this respect I agree with the comments that were made by Mr. Smith.

Secretary Dole made it clear that she was basing her conclusions that collective ratemaking results in increased rates on conclusions that had been drawn by the majority members of the Motor Carrier Ratemaking Study Commission. Their conclusions were based upon their view of conditions that existed prior to the 1980 act.

The fact is that since 1980 there has been free entry or virtually free entry in the motor carrier industry, which has led to free market ratemaking with—and you have heard the testimony here today of numerous discounts, deep discounts, and many, as deep as 50 percent, individual tariff filing by carriers, activities that are driven by the market.

The opponents of collective ratemaking are no longer in a position to say that it results in increased rates, that it shelters inefficient carriers, or that it creates the conditions under which labor costs can be escalated. All of these factors are now driven by market forces.

Now, it is true that there have been some rate increases in some areas, such as on small shipments, that have been greater than in other types of—or for other types of traffic. But these are areas where there were previously identified structural imbalances that were bound to be corrected as a result of the economic forces that were unleashed by the 1980 act.

So there are no longer any disadvantages that can be properly attributed to collective ratemaking and alleged to outweigh the benefits that come from that form of ratemaking. There are a number of benefits, chief among them being the fact that it facilitates joint arrangements, joint line arrangements between single line competitors that would without antitrust immunity expose the carriers to serious antitrust risks.

And it is particularly important to convenience interlining, a very prevalent practice in the industry that permits the more efficient use of equipment by coordinating services between local and long haul carriers.

The information functions performed by rate bureaus are also important, in that they result in a reduction of transaction costs. Carriers and shippers are not required to spend as much in the collection of information as would otherwise be the case, and it provides the information to carriers and shippers that permits a workable competition within the industry.

So collective ratemaking today is pro-competitive and it results in efficiencies that help keep shippers' costs down. In 1984, the Congress responded to the needs of the maritime industry for antitrust immunity, and I would suggest that that would be a compelling guideline for the way in which the trucking industry ought to be viewed.

This legislation should not be adopted.

[The statement follows:]

STATEMENT OF ROBERT J. CORBER

My name is Robert J. Corber. I am a practicing attorney in the field of transportation with offices at 1330 Connecticut Ave. N.W., Washington, D.C. I served as a member of the Interstate Commerce Commission in 1975 and 1976. For a substantial portion of that time I served on Division 2 of the Commision which had responsibility for interpreting and applying the ratemaking provisions of the Interstate Commerce Act. My appearance today is on behalf of the major motor carrier rate bureaus.

The motor carrier industry has been wracked by changes in the regulatory environment in which it operates since the late 1970's. First the promotion of competition was elevated over other considerations in licensing. Entry was liberalized by virtual elimination of diversion of traffic and harm to competing carriers as criteria in the processing of applications for operating authority.[1] New opportunities were extended to private carriers to compete with regulated carriers.[2] Proposals were made to grant authority by master licenses for specifided kinds of traffic or operations, upon proof of fitness only.[3] Contract carriers were allowed to serve an increased number of shippers and thus compete more fully with common carriers.[4] In addition, proceedings were instituted to exempt from regulation carriers engaged in TOFC/COFC service.[5]

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[1] See, Liberty Trucking Company, Extension—Geneal Commodities, 130 M.C.C. 243 (1978), report on further consideration, 131 M.C.C. 573 (1979), abandoning a forty-two year old statement of principles established in American Bus Lines Operations, 1 M.C.C. 190, 203 (1936).

[2] Toto Purchasing & Supply Co., 128 M.C.C. 873 (1978), changing decisions dating back to 1938; Ex Parte No. MC-122, Intercorporate Hauling, Notice served July 16, 1979, proposing reversal of long-standing decisions preventing compensated intercorporate hauling.

These and other rulings drastically altering the regulatory landscape were followed by the Motor Carrier Act of 1980. Although its intentions to remove the cloud of uncertainty that had descended on the business of trucking was reinforced by admonition to the Commission to stay within "will-defined paramenters" of powers conferred in the Interstate Commerce Act, the 1980 Act neither promised nor brought stability to the industry. By adding a number of reforms of its own in areas of licensing, ratemaking and exempt as well as private carriage, the 1980 Act was itself the author of structural modifications of motor carriage. It was followed by administrative initiatives of the Commission that carries deregulation or reform still further. There was more liberalization of entry by granting applicants authority they had not requested for such traffic as bulk commodities and household goods.[6] In respect to rates, the Commission declined to formulate general standards for predatory pricing, destructive completion or unlawful discrimination on the ground that the inherently competitive nature of the motor carrier industry makes it unlikely that these types of infractions could occur.[7] Except for general increases which continue to be closely scrutinized, rate regulation is minimal and neither rate wars nor carrier instability are discouraged.[8] Major modifications have been mandated in the uniform freight classification.[9] The regulation of leasing of equipment and drivers has also undergone dramatic change with private carriers being authorized to use "single source" leasing along with common carriers,[10] trip leases rather than long-term (30 days or more) arrangements being permitted [11] and other prescriptions broadening leasing privileges.

While this list could be expanded, it is unnecessary to do so. My purpose is not to criticize regulatory reform or any of the actions taken (although I was an opponent of some). It is rather to underscore the fact that the motor carrier industry has been buffeted by wholesale changes in regulation for nearly a decade. How much more the industry can bend without breaking is difficult to tell. The changes have been so frequent and numerous that they have not been fully absorbed.

Adverse economic conditions since 1981 further complicate efforts to determine the real effects of the deregulation that has already occurred. Until there is some period of stability in trucking, there should be no thought of further deregulation. The industry is (1) still from previous changes in regulation, (2) emerging from the recession in the early years of this decade minus many large carriers that were forced into bankruptcy, (3) continuing right into the first quarter of this year with nearly two thirds of the top 100 carriers showing losses or reduced profits, including a drop in net income over the last year of nearly 50%, (4) finding that unsued excess capacity threatens to become chronic, and (5) incurring increasing costs to haul less freight than was available before 1980. These development have preempted the issue of timing. They militate against more destabilization of the industry.

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[3] Specialized carriers: Ex Parte No. 135, Master Certificates and Permits, Notice served September 27, 1979 (4 Fed. Reg. 57139); Government Traffic: Ex Parte No. MC-107, Transportation of Government Traffic, 129, M.C.C. 623 (1978); brokers: Entry Control of Brokers, 126 M.C.C. 476 (1977).

[4] Ex Parte No. MC-119, Policy Statement Regarding the "Rule of Eight" In Contract Carriers Applications, served August 24, 1978, overruling the 16 year old decision in Umthun Trucking Co., Ext., 91 M.C.C. 691 (1962).

[5] Ex Parte No. 230 (Sub No. 5), Practices of Carriers Involved In the Intermodal Movement of Containerized Freight; Improvement of TOFC/COFC Regulation, Notice published in the Federal Register on August 22, 1974.

[6] *See*, American Trucking Associations, Inc. et al., v. Interstate Commerce Commission, 659 F.2d 452 (5th Cir. 1981) enforced by writ of mandamus, 669 F.2d 957 (5th Cir. 1982), *cert. denied*, 103 S.Ct. 1272 (1983).

[7] Lawfulness of Volume Discount Rates—Motor Common Carrier, 365 I.C.C. 711 (1982); No. 38872, Petition for Declaratory Order-ATA-Lawfulness of Discount Rates, decision served October 1, 1982 (not printed); Ex Parte No. MC-166, Pricing Practices of Motor Carriers of Property Since The Motor Carrier Act of 1980, Served September 13, 1983 (not printed).

[8] Ex Parte No. MC 166, footnote 7.

[9] Ex Parte No. MC-98 (Sub No. 1), Investigation Motor Carrier Classification, 364 I.C.C. 906 (1981), on further consideration, decision served March 9, 1983 (not printed).

[10] Ex Parte No. MC-122 (Sub No. 2), Lease of Equipment and Drivers To Private Carriers, 132 M.C.C. 756 (1982), aff'd sub nom Ryder Truck Lines, Inc. v. United States, 716 F.2d 1369 (11th Cir. 1983).

[11] Ex Parte No. MC-43 (Sub No. 15), Elimination of Thirty Day Leasing Requirement Notice served August 29, 1983 (48 Fed. Reg. 39251).

The proposal to eliminate collective ratemaking is added cause for concern. It fails to take into account what has happened in the industry since 1980.

The Motor Carrier Act of 1980 was the hard-won product of a "delicate balance" among many forces seeking change in the regulation of motor carriers of property. It was not merely a political balance among contending forces but the middle road between a "totally free market and necessary Federal Regulation."[12] The formula was that of liberalization of entry (that has emerged as virtually free entry), on the one hand, and retention of collective ratemaking with reforms to assure the interaction of competition, on the other. This Committee reported that "[i]t is important to emphasize that this legislation does not propose to eliminate rate bureaus.[13] The legislative formula has yielded the intended results. It is generally agreed that the motor carrier industry is now strongly competitive and offers more service, rate options and discounts to shippers than ever before. While more than 31,000 new carriers were being authorized by the Commission following the 1980 Act, thousands of independent actions were filed and discounts were freely published, with the result that rates were discounted substantially from 15% upwards to as high as 50%.

In light of these facts it is surprising that the Department of Transportation attempts to justify the proposal to eliminate collective ratemaking on the ground that the collective process has raised rates unnecessarily and has not prevented undue discrimination. The same argument was advanced to the Commission in Ex Parte No. MC-172, Withdrawal of Antitrust Immunity For Collective Ratemaking On Small Shipments, and the Commission found that the evidence presented would not support the contention. The facts are that virtually free entry in motor transportation and the proliferation of new authorities granted by the Commission have made the industry highly competitive with wide-scale discounting and filing of independent actions for lower rates. The collective process is powerless to prevent these developments. Thus, if the period after 1980 is reviewed it cannot be concluded that collective ratemaking has been the cause of raised rates or necessarily failed in dealing with undue discrimination.

It is sometimes argued that greater rate increases for small shipments than for large shipments during this period are the result of collective ratemaking. In truth, however, the difference in increases is a consequence of structural imbalances that were corrected as the industry reacted to the stronger competitive forces of free entry. In 1982 the Commission adopted the Platform Study of its Bureau of Accounts which found that the Commission's previously employed costing methodologies had significantly understated costs of handling smaller shipments and overstated the costs of handling larger shipments.[14] Even before that was done the Commission had recognized the "small shipment problem" as one involving cost differences between small and large shipments.[15] It was for these reasons not unexpected that rates on small shipments would rise faster than those for large shipments when competition became the driving force of pricing.

Opponents of collective ratemaking have been deprived of arguments that alleged inefficiencies and artificially higher rates result from rate bureau activities. The fact is that, whatever was the case before 1980, when rate bureaus are evaluated in the light of the free entry and unrestrained pricing that has prevailed since 1980, they are pro-competitive and provide efficiencies in motor carrier transportation.

Among the benefits of rate bureaus is that they facilitate joint service arrangements that make the difference between a coordinated national transportation system and one characterized by hundreds of fragmented parts operating separately. Without antitrust immunity single-line competitors could not enter into joint line arrangements without risking antitrust violations. Although the Department of Justice and the Federal Trade Commission have sometimes asserted that immunity is not necessary for joint line arrangements, when analyzed their statements are found to refer to non-competing end-to-end connecting carriers. During oral argument before the Commission in Ex Parte No. MC-172, Withdrawal of Antitrust Immunity, the Department of Justice representative was asked about the need for antitrust immunity when competitors enter into joint-line arrangements and candidly said:

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[12] Congressman Hagedorn, 126 Cong. Rec. H5353.

[13] Senate Report No. 96-641, March 24, 1980, at 14.

[14] Ex Parte No. MC-129, 1977-1978 Platform Study of Class I and Class II Motor Common Carriers of General Freight Subject To Accounting Instruction, 27, 132 M.C.C. 851 (1982).

[15] Ex Parte No. MC-98, New Procedures In Motor Carrier Restructuring Proceedings, 359 I.C.C. 397 (1978). *See* also, Interstate Commerce Commission, Bureau of Economics, The Role of Regulated Motor Carriers in the Handling of Small Shipments, Statement No. 76-2, Washington, D.C., November, 1967.

That becomes a little more difficult. I am not going to tell you that it doesn't. (Transcript at 30).

The traditional position of Justice was stated by Assistant Attorney General Shenefield before this Committee on December 3, 1979, as follows:

. . . joint rate or division of revenue negotiations between carriers that are also single-line competitors would and should present antitrust problems.

Nearly all joint line arrangements in the motor carrier industry are made between competitiors. The problem can be especially acute in "convenice interlining" where large carriers transfer freight to local carriers for movement to destination or an interchange point because the large carriers' loads are not sufficient to justify special equipment for the local movement and the local carries can combine loads for efficiencies.

Antiturst immunity thus facilitates joint line arrangements that promote efficiencies and improve service for shipppers. Small communities are beneficiaries because approximately 50% of their shipments depend upon interline arrangements. These arrangements are also pro-competitive by providing shippers with alternative service and by making smaller carriers able to offer a range of services (through interlining) competitive with large carriers.

Another vital function of rate bureaus that benefits shippers and carriers is their role as an authoritative source of information about rates and classifications. The information is important even in an environment of individual ratemaking by carriers, for collectively published rates serve as the "baseline" or "benchmark" for negotiations between carriers and shippers . Economists generally recognize that there are economies of scale in the publication of information by rate bureaus that enable them to perform this function at less cost than individual carriers or shippers. Two kinds of benefits flow from the knowledge and information services of collective ratemaking. One is that they reduce the costs of information and knowledge in the making of prices and thus reduce transaction costs.[16] The other is that they provided the information that is necessary for shippers and carriers to participate effectively in the marketplace to achieve what economists call "workable" competition.[17]

While other attributes of collective ratemaking could be listed, these major items are sufficient to demonstate that this form of activity is a source of efficiencies in motor transportation that promotes competition and provides the means for maintaining a nationally coordinated system to the benefit of shippers, consumers and carriers as well. It is entirely dependent upon antitrust immunity for the performance of its essential functions.

The motor carrier industry has characteristics of unused excess capacity leading to uneconomic operations and a need for coordination of services that are comparable to the maritime shipping industry. Congress responded to the needs of the maritime industry in the Shipping Act of 1984 (Pub. L. No. 98-237, 98 Stat. 67) by conferring antitrust immunity far broader than that permitted motor carriers.[18] Then Secretary of Transportation Drew Lewis, wrote Senator Gorton on February 5, 1981, in support of a bill resulting in the 1984 legislation, a follows:

"[T]he members of the ocean liner industry should be free to conduct their business as they see fit, free of government intervention in the form of unnecessary regulation, vague standards, or threatened penalties under changing interpretations of antitrust laws. The ease of entry into shipping markets and specific prohibitions on certain predatory practices is the extent of intervention needed to prevent any group of carriers from accumulating or insuring excessive market power." (letter, p. 5)

These comments by the Secretary are appropriated here. Antitrust immunity is necessary to enable the motor carrier industry to function efficiently and effectively in responding to the interest of shippers and the public. It would be particularly inappropriate to remove immunity at this time, thus destroying collective ratemaking before the industry has stabilized following the Motor Carrier Act of 1980 and the elimination of single-line ratemaking last year. For these reasons the Committee is respectfully urged not to act favorably on the proposed deregulation legislation.

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[16] Booz-Allen and Hamilton Inc. presented a study to the Motor Carrier Ratemaking Study Commission that showed annual savings to shippers in the range of $4 to $8 billion.

[17] *See*, James P. Rakowski, The Nature of Competition In Common Carrier Trucking: Economic Theory Meets The Reality of the Marketplace, Boundaries Between Competition and Economic Regulation, Institute for Study of Regulation, Washington, D.C., 1983, pp. 179-184.

[18] Pooling of traffic, sharing of services and control of service territory without any right of independent action as known in motor carriage.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. You noted in your testimony what you believe to be the beneficial effects of the collective ratemaking system. Why then do shipper groups support abolition of collective ratemaking antitrust immunity?

Answer. The shipper groups now supporting the abolition of antitrust immunity for collective ratemaking are organizations of large shippers. They must be distinguished from smaller shippers, as illustrated by the testimony of Edward S. Paull of Precision Steel Warehouse, Inc. The larger shippers have found that their market power can be used effectively for negotiated discounts that smaller shippers allege are discriminatory. It is not surprising that the testimony in the hearings before the Subcommittee confirms that larger shippers are the primary beneficiaries of widespread discounting today. They see opportunities for use of their market power in the future. In addition, they are strongly critical of the lack of rate regulation by the Interstate Commerce Commission and, apparently seeing no hope of improvement, they have joined efforts to abolish motor carrier regulation, including collective ratemaking. This is illustrated by the prepared testimony of Richard G. Velten on behalf of NASSTRAC and DTPTC. Before the Motor Carrier Ratemaking Study Commission, Mr. Velten supported collective ratemaking. He has since become disillusioned with rate regulation by the I.C.C. and advances that as a reason for further deregulation. These shippers are not denying the existence of the benefits of collective ratemaking to which I alluded. They simply find other interests more compelling at this time and are in a position to forego the benefits of the collective process. On the opposite side are the thousands of small shippers who depend upon rate bureaus for price information and find benefits in the ability of carriers to "meet to produce rational and reasonable relationships among the thousands of different commodities, among weight brackets and according to distance", as stated by Mr. Paull.

Question. In your testimony, you cited the purported benefits of the current system of collective ratemaking in the trucking industry and urged against elimination of the antitrust immunity for these ratemaking activities. What makes the trucking industry so unique that it requires collective ratemaking for its pricing activities, when other U.S. industries are able to operate in a competitive pricing environment?

Answer. The essential feature distinguishing the motor carrier industry from other businesses is that motor carriers are part of a national coordinated system. The system would not exist without coordination of motor carrier services. In order for the system to exist any carrier in any part of the system must be able to reach any other part of the system by joint service arrangements with other carriers. It is not a system if the shipper or receiver cannot deal with a single carrier in the movement of a shipment to any part of the nation regardless of the number of carriers involved in the movement. That these characterisitcs of the system have enormous public significance is demonstrated in the single statistic found by the Motor Carrier Ratemaking Study Commission that about 50% of shipments for rural communities are interlined.

While antitrust immunity for collective ratemaking facilitates the joint service arrangements necessary for a coordinated system, there are other public benefits from collective ratemaking that are discussed in my prepared statement. Without antitrust immunity, the joint arrangements which provide these public benefits could not be formulated without risk of antitrust prosecutions or civil liability for treble damages in actions brought by civil litigants.

The only equivalent alternative to these joint arrangements would be a motor carrier industry comprised of carriers fit, willing and able to transport all forms of traffic anywhere in the nation without interlining. However, an industry so constituted will never exist as a practical matter. It is well known that even carriers with nationwide territorial rights for general commodities find that efficient use of equipment (reducing costs to shippers) requires interlining with local carriers having the ability to combine loads of a number of long haul carriers for short haul portions of movements. The same efficiencies are not present for the long haul carrier every day. For that reason, one day it may interline and the next day handle the local haul itself, when the loads are sufficient to justify use of its own equipment. The parties to these arrangements are not simply end-to-end connectors; they are competitors and would enter into these arrangements with nothing less than antitrust exposure in the absence of immunity for collective ratemaking.

The **Chairman**. Thank you, Mr. Corber.

Mr. Harkins.

Mr. **Harkins**. Thank you. I would like to first thank you for your personal commitment that enables us to present our comments here for the carriers we represent. I do have some prepared remarks, but in the interest of time I will try to summarize them instead.

I represent the general freight trucking industry, carriers that provide full service on all shipments of any size between all points in the United States on a demand basis. And we are in opposition to any further trucking deregulation and any further limitations that might be considered and placed on the collective ratemaking process.

We reiterate our request, made at the September 9 oversight hearings, that the Motor Carrier Act of 1980 be given a fair chance to obtain the objectives of the Congress. Those objectives are of a reform type nature, to try to take care of the problems which still seem to bother Secretary Dole, such as the popcorn problem.

We do not feel that—or we feel that the reformations of that particular act just simply have not been given the proper chance to be put in place, and that is caused by what we feel is another whammy which has been laid upon the trucking industry, and I define that whammy as the misadministration of the Motor Carrier Act of 1980 by the Interstate Commerce Commission.

I will not get into all of the points. You've heard some of the problems that were discussed this morning with respect to the particular administration of that act. The ICC and the Department of Transportation have both continued to submit to this committee misleading figures with respect to the results that the trucking industry has realized since the implementation of that act.

In fact, the industry is in very, very poor condition; 50 percent of those carriers that are still surviving today, 5 years later, are on the very brink of financial disaster. The profits for the industry are barely marginal. In fact, the top 10 carriers in the industry account for virtually 100 percent of the industry profits, and that is out of 2500 carriers. Most of them are very, very small.

We are experiencing a condition where we are hauling 38 percent less tonnage than we hauled prior to the 1980 act. Our productivity is dramatically down, by 4 percent. And contrary to what Mr. Sweeney suggested, our prices, the real prices to the shipping public, are up by 50 percent, and that is what we are concerned with.

We are not concerned with prices going down. Rather, we are concerned that, if deregulatory legislation is implemented, our prices will go up even higher. In fact, deregulation will worsen what we can anticipate in industry results. Prices, as I said, will not go down, they will go up because of the inefficiencies that would be caused by the impact of further deregulation.

We are very concerned over safety. We are experiencing today deteriorating safety circumstances on the road. It is a grave problem for the industry. And we are even more concerned with the fact that the DOT bill would eliminate what little there is today in the way of programs that hope to try and improve upon the safety experience of the carriers.

And with respect to collective ratemaking, I am in total agreement with Mr. Corber. If the collective ratemaking process is properly administered by the Commission, it is a procompetitive feature. The ICC misadministration of that and misadministration of economic regulation in general is what is causing the problem, the problem of discrimination, whereby we find larger shippers being favored without economic justification, to the detriment of smaller shippers. And that frankly is contrary to the public policy of this country.

We are a procompetitive country and we are just not able to realize that by virtue of the ICC's administration of the collective ratemaking process.

In fact, as Fred Smith also mentioned, this bill which is being proposed by the administration is not deregulation; it is reregulation. We would have our regulation transferred from being responsible to the Interstate Commerce Commission to being responsible to the Department of Transportation and the Department of Justice, the Federal Trade Commission, the Environmental Protection Agency, OSHA, and so on, and on and on and on.

And those agencies, their laws and regulations are not oriented to truck transportation problems, whereas the Interstate Commerce Act is. So we could expect a poor result if those regulations were to be applied to the trucking industry.

We urge this committee to reject this proposed law and to give the Motor Carrier Act of 1980 a fair chance to meet our goals and to produce a healthy and especially a safe and productive general freight industry that will serve on a fair basis all shippers, big and small, throughout the country.

Thank you, Senator.

[The statement follows:]

STATEMENT OF THE REGULAR COMMON CARRIER CONFERENCE

My name [1] is James C. Harkins. I am the Executive Director of the Regular Common Carrier Conference (RCCC), a trade association representing the interest of about 2500 motor common carriers of general freight. We thank this Committee for the opportunity to present the views of the general freight industry on the DOT bill to deregulate the trucking industry.

The RCCC is affiliated with American Trucking Associations, Inc. (ATA). Our membership is the backbone of the regulated for-hire trucking industry. Our members range from nationwide Class I carriers, with over $1 billion in annual revenue, to Class III regional carriers, with less than $1 million in annual revenue. As interstate common carriers, they individually and jointly provide a range of full transportation service to all shippers. The RCCC carriers transport truckload and less-than truckload shipments between all communities and shippers, large and small, throughout the United States. In 1984, the full service general freight carriers employed approximately a quarter of a million persons, owned more than 100,000 power units, provided more than 60 billion ton-miles of service, and generated over $17.5 billion in gross revenue. This constitutes approximately 85 percent of all trucking workers employed, 70 percent of all trucking ton-miles provided, 83 percent of all trucking power units used, and 82 percent of all revenue generated in the for-hire general freight trucking industry.

When Congress passed the Motor Carrier Act of 1980 (MCA 1980), it sought to promote vigorous, healthy competition and efficiency. It envisioned that regulatory change would reduce transportation rates and costs, enhance productivity, and give motor carriers the opportunity to earn a reasonable return on their investment and ensure a safe and sound national transportation system. The shipping public was to receive nondiscriminatory common carrier truck service and consumers were to realize lower prices. The RCCC supported the law as written and endorsed the Congressional objectives.

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[1] The supplemental attachments have been retained in the Committee files.

However, these goals continue to remain unachieved. The trucking industry continues in a state of instability and rapid change due to influences of the recession and dramatic economic shifts attributable to the MCA 1980 and particularly the failure of the ICC to administer that Act consistent with the spirit and intent of Congress.

In view of such circumstances, the RCCC membership strongly supports the position of the ATA that there be no further deregulation of the trucking industry nor further limitation of existing antitrust immunity for collective ratemaking. Congress should admonish, however, the ICC to enforce the statutory provisions to promote healthy, fair competition based on reasonable, nondiscriminatory rates, services, and practices.[2]

The focus of our presentation will bring attention to the grave financial condition of the full service general freight carrier industry. It will analyze the major provisions of the DOT proposal which we find inconsistent with promoting a healthy, competitive trucking industry that is necessary to serve the nation's transportation needs. We particularly invite attention to the representative facts we present and which give an accurate and complete picture of the industry. By doing so, we expect that the misleading statements of both the DOT and ICC will be cast in the proper light. These two agencies' allegations, which suggest a healthy general freight industry, are clever manipulations designed to give a false, but glowing, impression as to industry financial health. They do a disservice to their governmental responsibilities and the Congress by officially submitting such misleading representations.

AN OVERVIEW OF THE LAST SEVEN YEARS

In July of 1980 when the regulatory changes of MCA 1980 went into effect, the industry had for two years already been confronted with the ICC's administrative deregulation. We now have, in effect, the ability to draw some conclusions based on a seven year period of substantial regulatory change—both legislative change, as well as ICC administrative change.

a. We continue to experience substantial over capacity in the trucking industry. In the late 1970's regulated trucking firms numbered approximately 17,000. ICC data on new entrants over the last seven years indicate that figure has increased to over 40,000 by 1985. As well, the capacity to serve—even allowing for the high rate of bankruptcies—has more than doubled. This, combined with sharp declines in national output and demand for transportation, has produced extreme competition; and actually has been counterproductive since it has created economic waste, and poorer productivity which in turn has produced higher costs and rates overall.

b. This extreme competition has placed enormous pressure on motor carriers to cut costs and, in the case of many, at the expense of safety. In a related matter, motor carriers are experiencing increasing difficulty in purchasing and maintaining insurance as required under MCA 1980. Insurance companies have cancelled policies or are increasing premiums by as much as 400 percent.

c. General freight carriers continue to compete fiercely on a price basis for a substantially depressed market of freight transportation. Such fierce competition is further fueled by the demands made by large, economically strong shippers in a buyer's market of over six years duration. Competitive forces and ICC disregard for the law have led to shipper driven prices controlling very large blocks of the nation's regulated freight—prices that are unrelated to costs and produce an anti-competitive influence on the economy in that they favor large manufacturers over small manufacturers thereby reducing the opportunity for smaller manufacturers to effectively compete for markets dominated by the giants. MCA 1980 is designed to enhance price/service competition among carriers in such a way as to produce reasonable and nondiscriminatory transportation to all shippers. Unfortunately, the ICC In its present policy posture has not seen fit to meet its statutory obligations to assure proper application of the law toward Congressional goals of fair competition.

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[2] The RCCC testimony before the Committee at the September 9, 1985 Oversight Hearings on the Motor Carrier Act of 1980 addresses the Commission's failure to administer the law and recommends that Congress take specific remedial action. We urge Congress to act upon our prior requests.

d. Owing to a shrinking market, excessive waste from overcapacity, the resultant sagging productivity and new Federal and state taxes, industry costs have escalated at an ever increasing rate, virtually eliminating any profit. In an unsuccessful attempt to keep pace with these escalating costs, the industry's rate levels have dramatically increased over the past seven years, outpacing the Consumer Price Index, which they traditionally trailed in years prior to 1978 and regulatory change.

There remain over 2,500 general freight carriers—most very small companies. And out of that number a handful of the larger companies earn a profit. The rest are existing, one way or another. They no longer have the opportunity to earn a profit as before 1978, and we no longer have a healthy industry. By any fair description, we are a financial disaster. We are not growing either. Market share is shrinking and again, only a few companies are showing tonnage gains, but it is not growth. Rather, they are capturing market share of other general freight carriers while industry market share continues to shrink. These circumstances—financial disaster and shrinking market share—have produced a shattered industry with large numbers on the brink of disaster—hanging on and cutting corners just to live another day—lest ultimate bankruptcy overtakes them and all assets are lost to the pension fund liability requirements of ERISA.

Any reasonable and honest evaluation of the results of regulatory change upon the general freight transportation industry over the past seven years has to label them as disastrous. There is a continued waste of resources through grossly excess capacity; there is excess competition which is unhealthy and destructive. Ultimately, it will lead to a reduced quality of competition by virtue of the interaction of these forces causing fewer and fewer carriers to survive. We have lost efficiency and productivity. We are hauling less and less freight and it is costing more and more to do it. We are charging higher and higher rates, yet only a handful are earning any profit at all. The hopes of MCA 1980 have become the haunt of the 1985 general freight industry—not because of MCA 1980, but rather because of the gross misadministration of Congressional objectives by the ICC.

THE STATISTICAL ANALYSIS

To depict the facts which attest to the foregoing, we present herewith the financial and operating data for the general freight carriers over the past seven years. (See Table 19 for carrier list). These data track the general freight carrier performance and present the statistical proof for the above conclusions.

Table 1 shows the first half comparisons for the general freight carriers for the years 1981 through 1985. The composite operating ratio (gross revenue to gross expense) remains inadequate at 96.3 in 1984, but a closer look in Table 1A indicates the heavy concentration of profitability in a very limited number of carriers. First half 1984 results show that only 59 carriers had operating ratios of 95 or lower. In fact 59 carriers with operating ratios of over 100 and 42 with ratios of 97.6 to 100 are in disaster. The data for the first half of 1985, while not complete at this date, reflect a worsening of these conditions. The operating ratio has deteriorated to 97. More than 58% of the reporting carriers experienced an operating ratio exceeding 97.5—31% of which exceed 100 and are likely failures in the immediate furture. The results dramatize the precarious financial condition of all but a few carriers. Further, since data for carriers who have gone out of business are not included, the performance figures overstate the real industry condition.

A comparison of 1983 versus 1984 in Table 2 shows:

1984 Revenue up 1.3%
1984 Expense up 1.9%
1984 Gross margin down by 11.4%
1984 Net margin fell from 2.5% to 2.2%
1984 Revenue tons down by 4.6%

Of the carriers, 105, or 58%, had operating ratios over 97.5 and a composite operating ratio of 101.7. Fifty-seven, or 32%, had operating ratios over 100. Conversely, the 10 largest carriers accounted for 52% of the revenues and 36% of total tons, while the 10 most profitable accounted for 86% of the industry profit.

The year 1985, as in 1984, shows a continuing and deepening pattern of industry deterioration, a further consolidation of the dwindling market, and most of the industry profitability being limited to a handful of carriers. In that regard, the poor condition of the trucking operations of these surviving carriers is also understated since net profits shown include earnings from non-trucking activities such as sale of intangibles, interest income and so on. In cases, effective investment of cash flow in other than transportation areas has yielded earnings needed for survival. Of course, that precludes use of such funds for investment in new equipment, maintenance and the like.

Tables 2 through 18 summarize the data for the general freight carriers over the past eight years—1977 through 1985. These data represent more than 80% of the operations of the more than 2,500 general freight carriers in terms of revenue, income and tonnage.

To portray industry performance before and since MCA 1980, Tables 9 through 18 average the data for 1977 through 1984. The most significant results show that:

Industry tonnage is down 37.7% (line 12, Table 12)

Industry cost is up 10% (line 2, Table 12)

Industry revenues are up 7.8% (line 1, Table 12)

Operating ratio worsened from 95 to 97 (line 21, Table 12)

Operating ratio (excluding the top 10 revenue carriers) worsened from 96.4 to 98.2 (line 21, Table 12)

ROE worsened by 4.6 from 13.2 to 8.6 (line 22, Table 12)

ROE excluding the top 10 profit carriers worsened from 11.5 to 2.1, a drop of 9.4 (line 22, Table 13)

Truckload tonnage is down 46% (line 11, Table 12)

Less-Than-Truckload tonnage is down 24% (line 10, Table 12)

Briefly, the total freight hauled is 37.7% less than pre-MCA 1980; but the cost to transport the almost 38% less freight is even higher, by 10%, than the pre-1980 cost. In other words, the ton mile cost to shippers has increased dramatically by 50%. (Lines 1-16, Table 12).

The picture is clear—with the exception of a handful of carriers (almost exclusively the top 10 profit earners), the general freight industry is closer to the brink of disaster, despite the fact that the country has been experiencing a moderate economic recovery. With no working capital, most of the industry is shut out of purchasing new equipment and forced to operate (cannibalize) outmoded equipment. The safety implications of these circusmtances are obvious. Table 15 depicts the average annual additions of equipment running at $417.4 million during 1977-1979 compared to a disinvestment of $17.6 million since 1980.

Critical to the general freight carriers' ability to compete in the market is the ability to improve on productivity—that is, to get more service for each dollar of cost. In the pre-MCA 1980 years, we averaged 91 billion ton miles annually or 291 thousand ton miles per employee. In the post MCA 1980 years, we have averaged 65.4 billion ton miles annually or 279.6 thousand ton miles per employee—a drop of 3.9%. (Line 16-17, Table 12). As already mentioned, the ton mile cost to shippers for the same periods rose by 50%.

It is unavoidable that such overall and long-term conditions lead to dramatic departures from the industry. It is safe to suggest that with MCA 1980 most people expected there would be some losers and some winners. But no one could have forecasted the dramatic harshness of what has been and continues to go on. Table 8 reasonably demonstrates the impact of those carriers no longer in business. In 1977, those carriers represented annual revenues of almost $4.9 billion (over 41% of the industry revenues) and employed more than 126,000 people. The current picture demonstrates that 58% of the still surviving carriers with operating ratios exceeding 97.5 are desperately fighting for survival. These carriers account for $5.3 billion or about 38% of surviving industry revenues. More than half of these carriers, fifty-seven, have operating ratios over 100 and are likely failures in the near future.

The downward spiral continues and forecasts an early demise for more and more carriers which will hinder the industry's ability to provide the efficient and economical service the economy needs. Long term, a devastating blow will have been dealt to what was the finest, most responsive, most efficient and economical transportation system in the world.

On top of all these problems are the additional burdens influencing management decisions of the surviving carriers—burdens which are of a nature to produce synthetic although real economic barriers to effective carrier response to competitive market forces both from within the industry as well as from competing modes. The ATA testimony documents such matters (tax burden, insurance crisis, ERISA and so on) and they need not be repeated here.

The burden is growing at an out-of-control pace while the industry's ability to support it is quickly shrinking.

AN ANALYSIS OF THE MAJOR PROVISIONS IN THE DOT BILL

The DOT bill eliminates all federal economic regulation of the trucking industry. The major provisions are as follows:

A. Elimination of entry requirements

Sections 39 and 40 of the DOT bill eliminate ICC authority to regulate the entry requirements for motor common and contract carriers of property. With open entry, any and all carriers will be able to transport property for-hire without demonstrating a fitness or ablity to provide the service or a public need.

When Congress enacted MCA 1980, it carefully reviewed the major aspects of trucking regulation. The resultant compromise legislation was intended to promote the dual goals of "competitive and efficient" transportation which Congress felt were mutually reinforcing objectives. To accomplish these goals, Congress made substantial revisions in several major categories, including the entry provisions. Congress relaxed, but did not eliminate, the entry standards for common and contract carriers. It eliminated many of the prior restrictions placed on operating authorities which were felt to interfere with efficient transportation. Common carriers are still required to demonstrate that they are "fit, willing, and able" to perform the proposed service and that the proposed service would serve a public need. Congress recognized that these modest entry requirements enhance competition and ensure the fitness of the motor carriers.

The DOT proposal of unrestricted entry would further destabilize the industry. Morever, it would eliminate the mechanism by which the federal government can protect the public interest by ensuring that carriers possess the requisite safety, fitness, and insurance on a continuing basis.

B. Elimination of rate regulation

The DOT bill eliminates through Sections 19, 24, and 31 the authority of the ICC to ensure that motor carrier rates are not unreasonably high, low or discriminatory. However reluctant the current ICC has been to use this authority, it is essential that such protection remain and be enforced. For most shippers transportation is a significant portion of the cost of their product. It is critical to their being able to compete for markets that the rates charged are not unreasonably high or discriminatory via-a-vis their competitors, large or small. Similarly, carriers should not be required to meet unfair competition of other carriers' unreasonably low prices. The DOT bill would shift regulation of these aspects to the antitrust laws. However, those laws provide no control over rate discrimination in the trucking industry. Morever, their usefulness in dealing with anti-competitive unfair pricing is severely limited.

C. Safety ramifications

Driven by reduced demand and increasing capacity, extreme competition within the trucking industry has placed enormous pressure on motor carriers to cut costs by postponing vehicle maintenance. Data and information from both the federal and state levels indicates that there is an increase in the number of unsafe operators and equipment which is attributable to reduced regulation. For example, recent investigations by the California Public Utilities Commission, including expert testimony from the California Highway Patrol, indicate that there is a correlation between excessive competition and a decline in safety. Between 1978 and 1982 there was a steady decline in California's truck related accidents. In 1983, there was an increase, and in 1984 an even more significant increase. Commissioner J. E. Smith of the California Highway Patrol stated that "clearly, truck safety in California is deteriorating at a very rapid pace." (See, Exhibits A & B).

The New York Times recently reported on this trend toward unsafe operations. Inspections in that region indicated that "nearly half the highway rigs that were stopped in New York, New Jersey, and Connecticut in recent months had faulty brakes, defective steering or serious hazards. Many of the operators were driving illegally." The editorial noted that "[i]ncreased competition in the wake of trucking deregulation is tempting carriers to cut corners." (See, New York Times, August 13, 1985, page A22).

A recent study on truck safety by the AAA Foundation for Traffic Safety [3] reveals some of the same facts and conclusions. It notes that structural changes in the trucking industry since 1980 have produced rapidly aging equipment driven by less qualified drivers. It states that "the only way for a marginal carrier to stay in business, and a substantial number of today's full-load carriers are marginal, is to cut costs and there are few places to cut costs in motor freight operations . . . The only alternative is to run older equipment, pay less in wages, work drivers longer, and/or skimp on maintenance." The AAA Foundation concludes that these changes are "threatening the safe operation of motor carrier equipment on the highways and endangering the lives of motorists and truckers alike."

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[3] AAA Foundation for Traffic Safety, Safety Implications of Structural Changes Occuring in the U.S. Motor Carrier Industry, Forrest Baker, March, 1985.

This month, Congresswoman Cardiss Collins, Chairwoman of the Transportation Subcommittee of the House Government Affairs Committee, held a hearing on truck safety. (See, Exhibit C). At that hearing John O'Brien, Deputy Director of Operations in the ICC's Office of Compliance and Consumer Assistance, said an average of 843 carriers had their operating authority revoked between 1981 and 1983. This figure climbed to 1332 revocations in 1984 and is expected to top 2,000 this year. Motor carrier insurance premiums have skyrocketed over the last year. ATA has documented increases of 200% to 600%. Mr. O'Brien stated that insurance delinquencies had been averaging about 12,000 per year in the early 1980s, but totaled more than 15,000 during the past year.

Thus, an increasing number of motor carriers are dangerously taking safety shortcuts or dropping insurance coverage when confronted with escalating costs. The current law requires that an applicant demonstrate its fitness, obtain a provisional safety rating from the Bureau of Motor Carrier Safety, and purchase the requisite insurance prior to entry into the industry. These safeguards are in the interest of the public. They will be totally lost under the DOT bill.

Moreover, the bill would remove unwittingly the authority of DOT to regulate the maximum hours of service for motor carriers. Currently, DOT has the authority under 49 U.S.C. § 3102 to establish maximum hours of service to ensure safe trucking operations. This authority is specifically limited to motor carriers regulated by the ICC under 49 U.S.C. § 10521. Since Section 7 of the DOT bill would remove the ICC's jurisdiction over motor carriers of property, the DOT authority to establish such safety regulations would also be eliminated.

D. Elimination of tariff publications and collective ratemaking

Section 36 of the DOT bill removes the requirement that trucking companies publish their rates in tariffs open for public inspection. This eliminates an important factor promoting healthy price competition. In the absence of tariffs no interested carrier, shipper, or government authority could readily obtain knowledge of competitive rates either to react to competition or to pursue other lawful remedies. Without easy knowledge of all price and service options, competition cannot work. An important element of existing regulation that facilitates tariff publication of a rational and cost related price structure is the exemption from antitrust laws. In 1980, Congress made major revisions to the collective process, but, under rigid requirements, found it important to continue antitrust immunity for limited motor carrier activities. Currently, motor carriers have antitrust immunity to collectively establish general rate adjustments, joint-line rates, commodity classifications, and rules of general application. Section 23 of the DOT proposal would eliminate this immunity.

In view of the huge number of commodities, transportation characteristics, origin and destination pairs, weight categories and other factors, collective ratemaking is indispensable to the establishment and maintenance of rational and reasonable rate structures. The collective process allows in-depth statistical and factual evaluation of the costs involved in motor carriage in particular regions of the country. Motor carriers, and especially the smaller carriers, lack the capability of assembling and analyzing such data which is necessary to establish rates based on actual costs. They rely upon this rate bureau service.

No one is absolutely bound to the rate structures since individual carriers still have the unqualified right to price independently. Further, the ICC has the authority to disapprove and prescribe rates to assure that the public interest is fully protected. This carrier function produces a key element in the way competition works. Shippers can readily know all of the prices and services available and select the best price/service option. Absent such knowledge, competition would not have a chance to work at all.

It should be emphasized that in 1984 the Commission conducted a proceeding on this matter in Ex Parte No. MC-172[4] and found that on evidence in the record, collective activities of motor carriers are neither inconsistent with the transportation policy nor anticompetitive. In fact, a section of their case review speaks of the procompetitive aspect of the collective ratemaking system.

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[4] Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments, decision served November 27, 1984.

Many carriers also find it cost and service efficient to interline shipments with other carriers. The present antitrust immunity makes such joint-line rates and service legally possible. If the DOT bill became law, antitrust vulnerability would, as a practical matter, virtually eliminate the use of such cost saving arrangements and carriers would substitute a more costly single-line service. Such results are purely counterproductive.

E. Intrastate economic regulation

Section 61 of the DOT proposal mandates that the Secretary of DOT conduct a two-year study into whether state economic regulation of intrastate carriers burdens interstate commerce. Such a study is obviously a veiled prelude to the elimination of interstate economic regulation which a majority of the states currently find to be in the public interest. Such a course violates the basic doctrine of states' rights to control local affairs. The RCCC supports efforts to simplify and establish uniform state requirements which apply to interstate motor carriers. However, we also support the right of states to regulated entry and rates of intrastate motor carriers where they deem it in the public interest.

F. Motor carrier mergers

Section 59 of the DOT bill would delete the power of the ICC to approve or disapprove mergers between trucking companies. Under the current legal standard, the ICC must determine if such mergers are consistent with the public interest. The public interest standard includes, but is not limited to, the effect on competition.

Under the DOT bill, motor carrier mergers would become subject to the test of the antitrust laws which are limited exclusively to the effect on competition. The broader existing standard insures that all aspects of the public interest are considered in ruling on merger transactions. It should be retained.

CONCLUSION

The motor common carriers of general freight continue to be in very poor financial condition. The industry is not recovering from the effects of the recession and 1980 legislative changes, two of which just became effective last year. The DOT bill would only create further instability and financial distress, reduce carrier productivity, and compromise the public interest in highway safety. This Committee should reject the bill.

Thank you for your consideration of the RCCC position.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony you stated that, contrary to current experience, real rates charged to shippers of general freight prior to 1980 increased less rapidly than the Consumer Price Index. Testimony presented to the Commerce Committee prior to deregulation, however, showed that rates for shipment of many less-than-truckload commodities were increasing faster than the CPI and that only the rates in the more competitive truckload sector of the industry were keeping overall rate levels reasonable. To what rates were you referring in your statement?

On July 1, 1984 antitrust immunity for trucking industry collective ratemaking on single-line rates were eliminated. What has been the impact of this action on the trucking industry?

Answer. Testimony presented prior to deregulation which suggested rates for many LTL commodities were increasing faster than the CPI was deliberately misleading. Data presented by Senator Kennedy, purporting to show this, avoided evaluating the full price range of the general freight carriers and instead concentrated on shipments weighing less than 500 pounds. Clarifying and rebutting testimony was submitted detailing the full scope of the general freight carrier rate structure and attesting to the fact that historically, overall increases consistently trailed the CPI. As one should expect, increases in the more costly area of transportation (less than truckload shipments) were higher than the less costly area (truckload). Pound for pound, small shipments are more costly than large shipments and their prices should reflect that higher cost. For example, with a given increase in truck labor expense, a greater portion of that increase should be applied to the pound for pound more labor intensive small shipments—thus producing a greater increase there than in the truckload category. However, selectively comparing that segment of traffic to the full scope CPI is improper and misleading. If one wanted to attempt a comparison of only the LTL increases, it would seem that there should be an equal selection of comparable items making up the CPI which are the most costly.

My own feeling is that such a comparison would be an exercise in futility—just as was the misleading Kennedy representation of carrier prices versus the full CPI when only the prices for the most costly shipments were so compared.

The true facts are that carrier rates prior to deregulation were just and reasonable, did not discriminate, were based on costs, enabled carriers to effectively compete, and consistently trailed the increases experienced by the economy in general as measured by the CPI. Since the Motor Carrier Act of 1980, the opposite experience has resulted. The reasons for such results can essentially be traced to a tremendous excess of industry capacity, substantial economic waste and unhealthy competition—all leading to greatly reduced productivity and higher costs. The higher costs have generated the higher real rates to shippers as a whole, albeit simultaneous with diminishing minimal profits.

While the single line immunity provision was written into the MCA 1980 with an effective date of July 1, 1984, it was done so with an expectation of a reasoned approach by the ICC in implementing the new law in a way to cause the least disruption to the trucking industry. The delayed date was anticipatory of review by the Study Commission and ample time for planned adjustment by the trucking industry.

Within a few months of the enactment of the MCA 1980, the ICC had issued an interpretive order for revision of rate bureau agreements requiring substantial modification of the collective ratemaking systems. From that starting point, the ICC embarked on a mission of encouraging a pricing atmosphere that would facilitate individual carrier pricing while inhibiting collective pricing. The ICC has and continues to establish policies that abet the use of economic power by large shippers in pitting carrier against carrier so as to exact favored rates.

Essentially, the use of knowhow and economic influence is not of itself wrong. It becomes an anticompetitive factor, however, when the large shippers exact prices from carriers in general and larger carriers in particular, that are discriminatory and unreasonable. While the ICC has charged headlong in fanning the flames of competitive pricing, it has blindfolded itself in the area of assuring that such competitive activity does not bring about prices that are unduly discriminatory, unjust and/or unreasonable.

Under such an atmosphere, combined with unhealthy and unfair competition driven by excess capacity, carrier participation in the collective pricing under bureau procedures began to dwindle beginning in 1981. While there is continuing reliance on the collective process for many aspects of carrier pricing, the three and one-half years (1/1/81-7/1/84) of boiling competition and nonexistent ICC overview of rates filed by individual carriers has caused a substantial amount of individual single line pricing by carriers outside the collective process. Therefore, the passing of July 1, 1984 was really a non-event since major changes had already taken place. The impact of this date while insignificant does not tell the story. The impact of ICC policies which brought about individual carrier pricing, pricing which is secretive and unchecked by the ICC, has been the establishment of truck transportation as an anticompetitive market force in the U.S. by virtue of large shippers enjoying undue favoritism to the disadvantage of their small competitors. It is also leading to increasing concentration in the general freight industry which, left unchecked, will also produce a future with less and perhaps inadequate competitive forces in the industry.

The effect in short has been the emergence of unhealthy competition that is producing an anticompetitive force unduly favoring large shippers and which will eventually lead to a concentration in the industry that could itself be anticompetitive.

Mr. COBURN. Thank you, Senator. And I am glad to see the committee had the good sense to save the best panel for last.

The CHAIRMAN. I think it is doing very well so far.

Mr. COBURN. My name is David Coburn. I am a partner in the Washington law firm of Short, Klein, and Karas. I appear before the subcommittee today in my capacity as counsel to the Regional and Distribution Carriers Conference of the American Trucking Associations.

RDCC is an association of approximately 350 motor common carriers of general commodities located in virtually every State. As the conference's name discloses, RDCC members are specialists in short-haul freight consolidation and distribution operations, as well as in regional multistate trucking operations in both the truckload and less than truckload sectors.

An important percentage of the traffic of RDCC members is interlined with long haul motor carriers. RDCC carriers, in this sense, are the feeders in these interline arrangements. They are the carriers which specialize in consolidating small shipments moving over long distances and transporting them over the short hauls near the origin and destination points which the interlining long-haul carriers do not find economical or convenient to serve directly.

Virtually all RDCC member carriers are privately owned, frequently family-owned businesses, in which the owners are intimately involved in daily management. The approximate gross operating revenue of a typical RDCC carrier in 1984 was $8 million.

As small businesses, RDCC carriers tend to often rely for their management decisions not on large staffs of rate, tariff, and sales experts, but on the entrepreneurial skills of their owners and chief executives. They also rely, however, on information offered to them through the rate bureaus, in which the vast majority of them participate.

RDCC opposes the Trucking Deregulation Act of 1985 proposed by Secretary Dole. The conference subscribes fully to the position of the American Trucking Associations, that Congress should take no further steps now or at any point in the future to further relax or do away with the liberalized scheme of economic regulation fashioned by the Motor Carrier Act of 1980.

RDCC is particularly concerned with two issues, which I will confine my remarks to: First, continued antitrust immunity for collective ratemaking, and second, the preservation of meaningful regulatory prohibitions against below-cost and otherwise unlawful rates.

Collective ratemaking is important to RDCC carriers because rates formulated through rate bureaus which reflect regional cost experiences provide a readily available frame of reference from which carriers can derive reasonable and compensatory prices for all of the different types of traffic they may be asked to transport.

With varying degrees of accuracy, small carriers may be able to determine their costs on any particular shipment. However, customized costing and pricing decisions for each of the myriad types of freight moving between virtually any combination of origins and destinations is not a luxury which most small carrier managers can afford.

The pressures of running a business on small carrier managers therefore make essential the presence of benchmark bureau rates that they can use for competent guidance in the independent rate determinations that they make. Beyond that, bureaus also provide a vital mechanism through which carriers can recover, through general rate adjustments, increased expenses experienced by all of them.

Bureau expertise is critical in this regard in terms of analyzing data and providing studied advice to carriers. Collective ratemaking also fosters the establishment and maintenance of a full network of joint rates under which regional and distribution carriers move the considerable amount of interline traffic that they handle.

Without immunity, as you have already heard this morning, such rates and divisions of revenue would have to be individually negotiated in a setting where larger carriers would have a greater opportunity to dictate the rates and divisions, and where antitrust uncertainties would severely constrain the process by which joint rates are formulated.

RDCC carriers also support the retention of regulatory prohibitions against below-cost and other unlawful rates, as well as renewed ICC enforcement of motor carrier rate standards. The excesses of unrestrained pricing have today resulted in an environment in which pressures imposed by large shippers and the pressures of carriers fighting to retain market share in a setting where total traffic is shrinking have led to many noncompensatory rates.

The absence of ICC willingness to provide statutorily available administrative remedies for unreasonable and unlawful rates has only fueled this problem, adding an extra degree of frustration for carriers who want only to compete on a fair and lawful basis.

An apparent byproduct of the de facto deregulation which we see today is the ever-growing concentration of traffic volume in the hands of the small group of very large carriers. It is indeed startling that, of the carriers which handled the vast bulk of general commodities traffic in 1984, the 10 largest accounted for 52 percent of revenues and 36 percent of total tons, and the 10 most profitable, for 86 percent of all industry profits.

If increased concentration is the price of deregulation, as appears to be the case, RDCC submits that it deserves careful scrutiny which it has not yet received. A study of that issue is warranted now, not in a setting where the post mortem of small carriers is being written.

For these reasons, RDCC urges the subcommittee to refrain from further deregulation of the motor carrier industry, to continue to monitor the impact of the Motor Carrier Act, to instruct the ICC to enforce all sections of that act, and to study carefully all aspects of the trend toward concentration in the industry.

Thank you for the opportunity to present these views.

[The statement follows:]

STATEMENT OF REGIONAL AND DISTRIBUTION CARRIERS CONFERENCE, INC. OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

My name is David H. Coburn and I am a partner in the law firm of Short, Klein & Karas, P.C. I appear before the Subcommittee today in my capacity as general counsel of the Regional and Distribution Carriers Conference, Inc. (RDCC) of the American Trucking Associations, Inc. (ATA).

RDCC is a trade association of approximately 350 motor common carriers of general commodities located in virtually every state. RDCC is one of the fastest growing conferences of ATA and, increasingly, it is assuming its role as a leading voice of the smaller and regionally-oriented motor carriers which operate as a vital link in the nation's transportation network.

As the Conference's name discloses, RDCC members are specialists in short haul freight consolidation and distribution operations, as well as in regional, multi-state trucking operations, in both the truckload and less-than-truckload sectors. An important percentage of the traffic of RDCC members is interstate traffic interlined with long-haul carriers, including transcontinental motor carriers, ocean carriers and railroads. RDCC carriers are the "feeders" in these interline arrangements—the carriers which specialize in consolidating a series of small shipments moving long distances and transporting them over the short hauls near the origin or destination points which interlining long-haul carriers do not find economic or convenient to serve directly.

Virtually all RDCC member carriers are privately owned, and frequently they are family owned businesses in which the owners are intimately involved in daily management. The approximate gross operating revenue of a typical RDCC carrier in 1984 was $8 million. Most RDCC carriers have under 100 employees. As small businesses, RDCC carriers tend often to rely for their key management decisions not on large in-house staffs of rate, tariff or sales experts, but on the entrepreneurial skills of their owners and chief executives, as well as on the information offered through rate bureaus. A recent survey of RDCC members revealed that most members belong to two or more bureaus.

I appear today to voice RDCC's opposition to the Trucking Deregulation Act of 1985 recently proposed by the Secretary of Transportation and to any like bill designed to altogether eliminate economic regulation of the motor carrier industry. RDCC subscribes fully to the position of ATA that Congress should take no further steps to further relax or do away with the liberalized scheme of economic regulation fashioned by the Motor Carrier Act of 1980. RDCC also believes that Congress should take no steps to eliminate the ICC's authority to confer antitrust immunity for collective ratemaking.

Just a few weeks ago, RDCC's Policy and Finance Committee, and its Board of Directors, overwhelmingly adopted the policy statement on economic regulation attached to this statement. In brief, this statement reaffirms RDCC's long-standing support for continued federal and state regulation of motor carriage as a means of ensuring an economically viable industry responsive to shipper needs. The statement reflects RDCC's philosophical alignment with the view that the trucking industry is invested with a special responsibility to provide adequate and responsive service to the public on a non-discriminatory basis, and that this responsibility cannot be met absent retention of enlightened regulatory oversight in the form of entry, rate, finance and consumer protection controls designed to ensure the industry's viability.

RDCC endorses the approach, adopted by the drafters of the Motor Carrier Act of 1980, of retaining only those regulatory constraints essential to preservation of a sound and financially fit transportation network. It favors efforts designed to ensure that fair competition can flourish within those regulatory parameters. Unfortunately, however, the Interstate Commerce Commission (ICC) has viewed the 1980 Act as a mandate to engage in broad-scale deregulation of its own, with the result that the industry is now plagued by generally low profitability, often unremunerative rate levels and increased concentration—foreshadowing what might well follow if regulation was to be completely eliminated.

RDCC believes that the "regulated competition" philosophy of the 1980 Act should be given an opportunity to work as it was intended to work and that the ICC should be directed to enforce all of the provisions of that Act in a vigorous and meaningful way. Until and unless the facts conclusively show that regulated competition is not working and that total deregulation is in the public's best interest—and RDCC submits that the available evidence proves otherwise—Congressional resources would be better devoted to the other issues high on the agenda of ATA and RDCC's member, e.g., tax reform and amendment of the multiemployer pension plan law.

Due to obvious time constraints imposed by this Committee's hearing schedule, I will not detail RDCC's views on the numerous issues raised by the proposal to eliminate all ICC regulation of the trucking industry. Rather, this testimony will focus on two areas of overriding significance to RDCC's members: (1) the peculiar value of immunized collective ratemaking to small and regional carriers and (2) the necessity of maintaining and enforcing strong and well-defined standards of rate reasonableness and prohibitions against unreasonable rate discrimination and below cost pricing. RDCC submits that these dual goals of retaining rate bureaus and restoring meaningful rate regulation are essential to the preservation of the present network of large and small carriers which work together to serve the shipping public. Elimination of these and other regulatory controls will not foster competition, but rather will foster the already-manifest trend toward greater industry concentration and oligopoly, while dealing a fatal blow to privately and family-owned small trucking businesses.

A. Collective ratemaking is essential for small carriers survival.—RDCC carriers depend no less on rate bureaus in the 1980's than they did in the 1950's. To be sure, rate bureaus, like the rest of the trucking industry, have undergone substantial changes since the days when virtually all common carrier traffic moved on the basis of collectively-made rates. While less traffic moves today at bureau rate levels, and while the role of bureaus as forums for rate formulation is now more highly circumscribed by the single-line ratemaking restriction and other restrictions imposed by the Motor Carrier Act of 1980, bureaus nonetheless continue to serve a variety of important functions. Some of these are described below.

First, regional rate bureaus provide a forum for the formulation of cost-based general rate adjustments. These adjustments are based on in-depth factual and statistical analyses of available cost data. Through these adjustments, carriers are able to recoup—but only to the extent approved by the ICC—increased operating expenses faced by them as a group.

Second, most small carrier managers simply do not have the time or resources to devote to analyzing cost data and thus assuring that their rates on each of the vast number of commodities they haul are reasonable and compensatory. Hence, they depend upon bureaus for aid in this regard. This is not to suggest that RDCC carriers cannot make reasonable estimates of their costs on any particular traffic. In today's competitive environment, they must be able to do that. However, the bureau rates serve as one critical facilitating device for busy carrier managers forced to make pricing decisions quickly and contantly on literally hundreds of different types of cargo moving over varying combinations of origins and destinations. Bureau rates provide a benchmark or frame of reference from which a carrier executive can determine—in a simplified and rational manner—the most appropriate level of a discount, if any, for the traffic at issue.

In fact, since rate bureaus are generally organized along regional lines, their value to carriers which focus on regional operations is enhanced. Regional bureaus serve as forums where rates can be made reflecting the cost characteristics and traffic consist peculiar to the particular area in which the bureau and its member carriers operate. For example, through their bureau, New England carriers formulate rates reflective of the costs applicable to the traffic consist and length of haul prevalent in that region, while carriers in the South collectively formulate very different rates applicable to their very different experience. In this sense, bureau rates provide especially accurate and valuable guidance for carriers to use in their pricing decisions.

Next, the joint line rate network which now results through a collective process in which regional carriers have a major voice would disappear if antitrust immunity was withdrawn. All joint line rates would necessarily have to be formulated through direct negotiations between the large, long haul carriers and the regional and distribution carriers with which they interline traffic. It takes little imagination to recognize that larger carrier would dominate this process—the joint rates would be published in their tariffs and they would dictate joint rate levels and the divisions of such rates. This is not to suggest that long haul carriers would act with malice in this regard—but the reality is that regional carriers would have less of a voice in determining the basis of which joint line service would be conducted than the economically more powerful long-haul carriers.

The end of antitrust immunity would probably also lead to significantly fewer joint rates due to antitrust concerns. Today, carriers with competing operations nonetheless often retain joint rate arrangements under which traffic which one of those carriers might not find operationally feasible to handle in single line service is transported. As noted, RDCC carriers often interline freight with long-haul carriers which have authority to transport it over the short haul, but often choose not to do so.

However, in a non-immunized setting such carriers would have to carefully make certain that any joint rates they might negotiate not become a device for facilitating unlawful price fixing of competing single-line rates offered by them. Since the antitrust uncertainties would be great for all parties involved, reasonable caution would likely dictate that carriers might abandon joint service arrangements altogether or that long haul carriers will carefully limit the number of regional and distribution carriers with which they will retain joint rate arrangements.

In view of the value of bureaus to them as outlined above, RDCC carriers perceive no reason why the immunity which these bureaus now have should be withdrawn. Recent experience has conclusively demonstrated that bureaus can, and do, co-exist with intense price competition. Elimination of antitrust immunity can only weaken the ability of regional and smaller carriers to survive, to the detriment of the industry and the public interest as a whole.

B. Retention of rate regulation is essential to deter unfair and discriminatory rate practices.—RDCC carries fully support the Motor Carrier Act of 1980's goal of fostering fair and non-discriminatory rate competition within the motor carrier industry. Unfortunately, however, this goal has not been fully achieved by virtue of the

ICC's failure to enforce the law as written. Definable standards of rate reasonableness and lawfulness do not exist today and there are no meaningful regulatory protections enforced by the ICC against predation and wholly unreasonable rate discriminations.

RDCC will not set forth here the full litany of ICC actions inconsistent with the rate regulatory provisions of the Motor Carrier Act of 1980. Those actions were described in the testimony of James C. Harkins on behalf of the Regular Common Carrier Conference of ATA, a sister conference of RDCC, at the September 9, 1985 oversight hearings held by this Subcommittee.

For evidence of the current state of affairs, however, one hardly need look beyond the ICC's refusal to exercise its authority to suspend and investigate new rates on the basis of allegations that such rates might be contrary to the statutory standards of reasonableness and lawfulness. It is a direct result of this policy, and of like policies, that an "anything goes" environment has been created in the area of motor carrier rates.

The situation which the ICC has created today through its administrative deregulation provides a glimpse into the future carriers would face if such deregulation was broadened and made permanent as a result of the proposed legislation. It is not a happy picture for the industry. Again, Mr. Harkins' testimony and the testimony of ATA President Thomas J. Donahue at the September, 1985 oversight hearings set forth, with impressive statistics, the sad facts regarding the financial state of motor common carriers: aside from a relatively healthy group of super-large carriers, most of the industry is suffering from deteriorating operating ratios, expenses growing at a faster pace than revenues, reduced tonnage, consistently low and falling return on equity and lack of profit.

RDCC carriers have not been immune from these trends. As a group, they have suffered along with the vast majority of other carriers. In particular, they have suffered from the competitive excesses of carriers which have targeted specific regional markets for incursion by employing a variety of unlawful rates and practices, as well as from excesses fueled by unreasonable demands of a few large and powerful shippers. The fact of life that RDCC members have had to live with is that they have few options remaining for adequately responding to unfair pricing pressures and tactics. They are too often faced with the Hobson's choice of either reducing their own rates to unremunerative levels or sacrificing traffic.

The ICC refuses to hear complaints about unfair or unlawful pricing. Further, the antitrust laws provide little solace, for antitrust litigation is not only expensive, and its results unpredictable, but few antitrust courts have provided any sort of relief to persons who have suffered from below-cost pricing.

It is important to emphasize here that RDCC carriers are not complaining about rate competition—they live with competition daily and recognize that with good skills they will thrive. But they are too often deprived of the opportunity to successfully compete by an environment where there is no satisfactory redress for competitive excesses.

By contrast, the prime beneficiaries of the current state of rate deregulation have been relatively few super-large carriers—which have exhibited a persistent growth in market share. The trend toward concentration of revenue, tonnage and profits among the ten or so largest motor carriers has been documented in the 1983 testimony before this subcommittee by Dr. Irwin Silberman and, more recently, by the testimony earlier this month of Messrs. Donahue and Harkins. To cite but a few startling statistics, of those carriers which transport the vast bulk of general commodity freight, the largest ten carriers now account for 52% of revenues and 36% of total tons and the ten most profitable for 86% of industry profit!

RDCC submits that the alarming trend toward concentration now becoming evident in the industry deserves very careful study. If, as appears to be the case, concentration is a by-product of deregulation, then this fact should serve as a warning to the advocates of permanent deregulation and, if nothing else, provide a firm basis for further study of the effects of concentration on the industry as a whole and on the shipping public. If total deregulation will eventually lead to the survival of but a handful of trucking companies, then that possibility should be considered carefully now, not in a setting where the post-mortem of the small carrier is being written.

RDCC does not propose that the clock be turned back to the days of strict rate regulation. However, it is the position of the Conference members that the answer to the industry's current woes resulting from administrative rate deregulation is not to institutionalize the ICC's conduct by statutorily divesting it of all regulatory authority over trucking. Instead, the Conference advocates reestablishment of the ICC's role—as envisioned by the Motor Carrier Act of 1980—as a referee of rate practices and a forum to which carriers and shippers can turn for prompt and appropriate action with respect to rate practices which exceed fair and honest competition.

CONCLUSION

The absence of extensive comments by RDCC on other aspects of the motor carrier deregulation proposals should not be interpreted as concurrence in those proposals. RDCC hereby reaffirms its support for retention of reasonable entry controls which are designed to ensure that new carriers are fit and safe, and that there is some public need for their proposed operations. RDCC also reaffirms its continued support for tariff filing requirements. The filing of tariffs is obviously an essential prerequisite to meaningful common carrier rate regulation by ICC.

In short, RDCC urges this Subcommittee to do the following:

1. Refrain from further deregulation of the motor carrier industry
2. Continue to monitor the impact of the Motor Carrier Act and, in particular, review whether the mix of competition and regulation established by that Act is consistent with public needs.
3. Instruct the ICC to enforce all sections of the Motor Carrier Act in order that that Act may achieve its stated goals of fostering reasonable and non-discriminatory ratemaking.
4. Study carefully all aspects of the trend toward concentration in the motor carrier industry and the impact of deregulation on that trend.

I thank the Subcommittee for this opportunity to present views on behalf of RDCC.

Policy Statement of Regional and Distribution Carriers Conference on Economic Regulation of Motor Carriage and Collective Ratemaking

The Regional and Distribution Carriers Conference of the American Trucking Associations, Inc. (RDCC) believes that motor carriage of property is of critical importance to the conduct of business in the United States and to the American economy in general. In consequence of this vital role, there exists a general public interest in the stability and financial well-being of the motor carrier business and in the deterrence of practices which threaten or impair the ability of motor carriers to provide a standard of service necessary to meet the needs of the shipping public.

RDCC submits that this public interest can only be protected if there continues to exist federal and state economic regulation of motor carriage, embracing the right of carriers to engage in collective ratemaking under a grant of immunity from federal antitrust laws. Regulation is needed to protect against unreasonable, discriminatory and predatory rates and rate practices in the industry and to ensure safe and adequate transportation service by carriers fit to provide such service. Collective ratemaking is essential to ensure that carrier rates are compensatory and fair to the shipping public.

The continued existence of economic regulation of motor carriage and of immunized collective ratemaking is, however, presently under scrutiny by advocates of further deregulation. At the same time, there exists a state of relaxed enforcement by the Interstate Commerce Commission of existing statutory requirements.

To maintain the well-being of the motor carrier industry, and in particular of regional and distribution carriers, RDCC hereby reaffirms its long-standing support for the retention of federal and state regulation of motor carrier entry and rates, including antitrust immunity for interstate and intrastate collective ratemaking, and the effective enforcement by the Interstate Commerce Commission of existing provisions of the Interestate Commerce Act which require tariff filing and which make unlawful predatory and discriminatory rates and rate practices. RDCC also supports the retention of a strong federal program to ensure high motor carrier safety standards.

Questions of Senator Packwood and the Answers

Question 1. In your statement you urged preservation of meaningful regulatory prohibitions against predatory and otherwise unlawful rates. Other witnesses at the Subcommittee's September 27 hearing, however, asserted that the Interstate Commerce Commission is taking no action with respect to predatory and otherwise unlawful rates. How do you reconcile these two views?

Answer. The two views set forth in this question need no reconciliation for they are not inconsistent. It is RDCC's position that: (1) the existing statutory scheme of regulation appropriately incorporates meaningful regulatory prohibitions against predatory and other unlawful rate practices and (2) the ICC is not enforcing these prohibitions, thereby allowing the proliferation of rate practices harmful to competition and to the health of the motor carrier business. RDCC favors restoration of administrative policies which are in full compliance with the statutory design of regulation.

With respect to the first point, the Motor Carrier Act of 1980 worked no revolution of the basic scheme of Interstate Commerce Act rate regulation. Specifically, the 1980 law did *not* eliminate the requirement that rates be reasonable (49 U.S.C. § 10701) or relax the prohibitions against unreasonable rate discrimination 49 U.S.C. § 10741. The National Transportation Policy against "unfair or destructive competitive practices" was also left unchanged. 49 U.S.C. § 10101(a)(4). While various liberalizations of rate regulation were incorporated in the 1980 amendments—most notably the "zone of rate freedom"—the ICC retained its authority to suspend and investigate new rates on the basis of probable unlawfulness or unreasonableness, and to hear complaints against rates already in effect. The Commission's potent rate suspension authority was retained even as to zone of rate freedom rates which may be unlawfully discriminatory or "constitute predatory practices." 49 U.S.C. § 10708(d)(4).

RDCC believes Congress should preserve these and related statutory rate regulation provisions. Properly administered regulation of rates can serve as an effective deterrent against rates and rate practices which exceed the bounds of fair and healthy competition.

For example, the ICC historically barred, and retains authority to bar, reduced rates which, even if compensatory (in excess of variable cost), are coupled with agreements effectively foreclosing effective competition by other carriers. Contract Rates, Rugs and Carpeting from Amsterdam, N.Y., 313 I.C.C. 247 (1961), aff'd, New York Central R. Co. v. U.S., 194 F. Supp. 947 (1961) (a discount rate requiring the tender of a defined percentage of a shipper's traffic is an unlawful competitive The practice); *Great Lake Ship Owners Assn. v. Chicago & N.W. Ry.*, 341 I.C.C. 272 (1972) (similar). The ICC has also historically exercised its broad regulatory authority, which again it still retains, to prohibit rates which are below variable cost and thus noncompensatory. E.g., Frozen Foods from Transcontinental to Middle Atlantic States, 313 I.C.C. 469 (1961).

The long history of ICC exercise of meaningful rate regulation, as reflected in these and like decisions, did not deter competition, but rather tempered its harmful excesses and effectuated the important public policies of assuring rate fairness and reasonableness to the shipping public. At the same time, such regulation served to provide motor carriers with adequate tools to combat rate practices which might jeopardize their ability to provide vital service to shippers. In fact, the drafters of the 1980 amendments obviously did not find the retention of substantial ICC rate regulatory authority inconsistent with the rate competition they sought to foster.

Nonetheless, as RDCC and many other witnesses testified at the September 27 hearing, the ICC has interpreted the 1980 Act as a license to virtually abandon all rate regulation. The agency has done so, with the effect that almost any rate practice is now permitted, regardless of its reasonableness or harmful impact on competition. The best evidence of the ICC's failure to regulate rates is its decision in Ex Parte No. MC-166, Pricing Practices of Motor Carriers Since the Motor Carrier Act of 1980 (served August 26, 1983). In that decision, the ICC announced that it would neither establish standards with respect to predatory or discriminatory pricing practices nor excercise its authority to suspend and investigate new motor carrier rates on the basis of claims that such rates are unlawful. The ICC also announced its belief that rate predation is unlikely in the motor carrier setting. The decision in that case simply confirmed as policy numerous decisions in individual ICC suspension proceedings in which the agency refused to bar rates which were demonstrated to be plainly below cost or otherwise unlawful.

Other ICC decisions confirm the decision of that agency to abandon rate regulation. Contract carriers now need no longer file tariffs at all [1] and the usefulness of motor common carrier tariffs was all but eliminated by virtue of blanket short notice rules.[2] Unpublished (and thus unregulated) rates ae now a major characteristic of motor carrier pricing.

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[1] Ex Parte No. MC-165, Exemption of Motor Contract Carriers From Tariff Filing Requirements, 133 M.C.C. 150 (1983).

[2] Ex Parte No. MC-170, Short Notice Effectiveness For Independently Filed Motor Carrier and Freight Forwarder Rates, (Served May 23, 1984).

The results of the ICC's policies are evident, especially in the LTL sector of the motor carrier business, in which most RDCC members specialize. In the absence of regulatory bars, discounts unrelated to costs are now rampant, as are rates which serve to lock up traffic of large volume shippers for certain carriers and rates which—solely at carrier discretion—apply for certain shippers and not others which are similarly situated.

Many of the most egregious pricing practices are employed by huge national mega-carriers with the result that smaller carriers (such as compose RDCC's membership) are injured. For example, discounts made applicable either in particular regions of the country or, in other cases, for the account of large volume shippers are often used by these mega-carriers. These discounts—often so substantial as to be clearly unrelated to costs—have the effect of reserving for the large carrier event small volume and/or short distance traffic on which most RDCC members rely. The large carrier can subsidize its losses on this traffic from other revenues. The small carrier cannot and thus suffers the consequences.

Further, in the unrestrained pricing environment fostered by the ICC's failure to regulate, it is the large volume shippers (those pressing hardest for further deregulation) which have the upper hand in the fierce battle among carriers to obtain their freight. These large volume shippers are now free to force carriers to offer fundamentally unsound and discriminatory rates which are destructive of the concept of rate fairness as between competing shippers, as well as destructive of the motor carrier industry's financial health. This is just the sort of excess of the "free" market which effectively enforced "rules of the road" inhibit in an industry as vital as motor carriage.

The long term viability of short haul regional and distribution carriage is placed in jeopardy by uncontrolled pricing practices which have the effect of favoring large over small carriers. At least some of the implications of this administrative deregulation are already manifest in the form of well-documented increases in concentration levels in the LTL sector, especially among the few mega-carriers (noted in RDCC's written testimony), record high levels of carrier bankruptcies and a state of general financial hardship and deterioration among motor carriers.[3]

RDCC submits that this nation benefits from a healthy and diverse trucking industry composed of large and small businesses. RDCC carriers—mostly privately owned and family run businesses—are the backbone of an industry which has historically provided excellent short-haul and regional service to shippers large and small, rural and urban. Restoration of meaningful ICC rate regulation of the short contemplated by the Motor Carrier Act of 1980 is essential for competitive fairness among shippers and the continued ability of these small carriers to provide essential freight service.

Question 2. You stated in your testimony that the degree of continued regulation provided in the Motor Carrier Act of 1980 is essential to assuring the existence of a sound motor carrier industry and transportation network. Are you satisfied with the Interstate Commerce Commission's implementation of the remaining regulation over the motor carrier industry?

Answer. As the previous answer indicates, RDCC is *not* satisfied with the ICC's implementation of the remaining regulation of the motor carrier industry. RDCC favors substantially increased ICC oversight of below cost and other pricing practices, restored use by the ICC of its suspension and investigation powers with respect to plainly unlawful rates and practices, establishment of meaningful tariff filing requirements and the implementation of standards for rate discounting and other pricing practices.

RDCC is also unsatisfied with the liberality with which the ICC has exercised its authority over motor carrier entry. The Motor Carrier Act of 1980 retained public need and fitness tests for motor carrier operating authority, both for common and contract carriers. However, motor carrier authority is now available virtually on request, without any demonstration of public need or showing of fitness. Contract carriers are regularly authorized to serve entire industries or large sectors of the shipping public, even where such carriers fail to come forward with any shipper support statements.[4]

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[3] Even the large volume shippers proposing further deregulation, including the members of the National Small Shipments Traffic Conference (NASSTRAC), have told the ICC in their filings in Ex Parte No. MC-177, Negotiated Motor Common Carrier Rates, that the most important problems facing them are those related to carrier bankrupties.

[4] *E.g.*, Docket No. MC-139243 (Sub-No. 12), River Bend Transport Company. (Served April 22, 1985).

This is not, RDCC submits, what Congress had in mind when it retained entry controls in the 1980 Act. RDCC submits that liberal ICC entry policies have resulted in too many carriers fighting for the limited amount of available freight. This is contrary to the public need test incorporated in the Motor Carrier Act and contrary to the preservation of a financially sound motor carrier industry, as mandated by the National Transportation Policy.

RDCC is also concerned that the ICC's failure to use the regulatory tools respecting rates and entry provided by the Interstate Commerce Act is having an adverse impact on highway safety. RDCC believes that there is a linkage between the financial deterioration of the motor carrier industry, the ease of entry into the industry and the decrease in highway safety recently documented.[5] Carriers caught in a battle for survival in which they are confronted with unfair large shipper pressure to reduce rates are necessarily forced to cut expenses somewhere. Vehicle maintenance and driver safety rules are often the most tempting areas for such cuts.[6]

Since the ICC is not scrutinizing the safety records of new applicants, it is inevitable that carriers unwilling or unable to comply with detailed safety requirements are being licensed to operate. Under a properly enforced regulatory scheme, the ICC would screen the fitness of all new applicants and use the powerful tool of license revocation to ensure that carriers already operating remain in compliance with safety requirements. However, it is not doing so.

RDCC thus reaffirms its view that effective regulation is good for the motor carrier industry and for the shipping and consuming public. Congressional efforts should thus be focused on admonishing the ICC to adhere to regulatory standards set forth in its governing statute, rather than on efforts to gut the existing statutory scheme of regulation.

The CHAIRMAN. Thank you all very much for very good testimony.

I know some of you are lawyers, or are all of you lawyers?

Mr. HARKINS. No, sir.

The CHAIRMAN. The rest of you are. Let me ask the three lawyers this question, then. If this bill were passed, would your business increase?

Let me tell you why I ask that question. It seems to me that when antitrust immunity exists people know what they can do. Once the antitrust laws come into place—and I am a great advocate of effective antitrust laws—I am not fighting the battle of antitrust legislation.

But it is true, is it not, that there are occasions when businesses do not really know whether what they are doing is within or without the coverage of antitrust laws, and they seek legal opinions as to whether or not they are going to be violating antitrust laws by their activities.

Is there a potential in this legislation for the creation of a new grey area where your business will be booming?

Mr. COBURN. Senator, if I may start, I think we probably, most of us in the transportation bar in Washington and around the Nation, have seen our practices shift toward a greater emphasis on antitrust since the enactment of the Motor Carrier Act of 1980, because of all of the uncertainties it created.

Right after that act, there was a great flurry of questions as to what remains permissible and what is not, and then again another flurry of questions after the single line restriction went into effect in 1984.

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[5] DOT's Bureau of Motor Carrier Safety statistics demonstrate an 18 percent increase in truck accidents from 1983 to 1984.

[6] See Baker, "Safety Implications of Structural Changes Occurring in the U.S. Motor Carrier Industry" prepared for AAA Foundation for Traffic Safety (March, 1985).

I do not think it should, frankly, have any bearing on what this committee does, but our business probably would increase if this Act was passed. And the best example I can give you, at least our business in terms of antitrust counseling, is the joint line situation. If immunity was withdrawn for joint line ratemaking, the immunity which exists today, there would be tremendous uncertainty as to when any particular two carriers could engage in a joint line rate without jeopardizing or without that raising antitrust risks.

A clear example arises in the case where two carriers have overlapping authority to provide transportation between all of the points covered by the joint line rate In other words, they could be competitors of one another if they chose to transport the traffic on a single line basis, but for a variety of reasons they choose to do it on an interline basis, and the question arises as to whether they can engage in that type of joint line ratemaking in the situation where they are actual or potential competitors.

And it is a very difficult question. The Department of Justice cannot even seem to figure it out, because sometimes they give one answer and sometimes they give another answer.

The CHAIRMAN. Do you agree, Mr. Corber?

Mr. CORBER. I agree with that. Could I just add one thing?

One of the original purposes of regulation, of the Interstate Commerce Act, was to develop a system of legal redress that would be available to shippers, as well as carriers, that would be less costly and involve less delay than proceeding through the court system. This was an important consideration, and I think that that is one of the results of—or would be one of the advantages of the present regulatory scheme if it were properly administered, that would be lost if all of this were to be tossed into an antitrust regime.

One thing for us all to keep in mind is that the antitrust laws have been adapted to types of businesses other than transportation, for the most part certainly, judicial activity dealing with things such as pricing. If the antitrust laws were to be amended so that they could deal with pricing in the transportation field, there is going to be a great deal of uncertainty.

The CHAIRMAN. How about you, sir? Do you agree?

Mr. DETTMAR. We have had some experiences since the 1980 act passed, and that was that there was a tremendous surge of business due to the uncertainty created by the new legislation. After that, transportation business tended to drop off, but antitrust concerns tended to increase, and I guess it is sort of a wash.

The CHAIRMAN. All right. But the antitrust business does increase, does it not? And it would if we were to pass this bill?

Mr. DETTMAR. That has been our experience to date.

The CHAIRMAN. Now, the antitrust opinions that I have read and that I have written, though it has been some time ago, were never clean opinions. That is, they were always hedged. Is that not correct?

Mr. CORBER. That certainly is consistent with my experience.

The CHAIRMAN. I mean, "never" is too strong a word, but it is very common that antitrust opinions are hedged because what the courts are going to do is highly unpredictable.

Mr. CORBER. What juries might do, what the Government policy might become.

The **Chairman**. And whether or not the lawyer writing the opinion totally understands what is really going on, right?

Mr. **Corber**. Yes, unfortunately that is true.

The **Chairman**. Now, would this difficulty of navigating the waters of the antitrust laws be particularly onerous, do you think, on small truckers? Would they be less likely to perhaps secure the advice of competent antitrust counsel and also less likely to be able to meet the fees of competent antitrust lawyers, and therefore more inclined to take risks and expose themselves?

Mr. **Corber**. I would not want to overstate the magnitude of legal fees, Senator.

But I think there is no question that the advice tends to become expensive, and it would be obviously less available to smaller carriers than it would be to larger carriers. Many of the larger carriers may have their own legal staffs that can deal with this, unlike the smaller carriers.

Mr. **Coburn**. I think I would second that and add that I think that what is likely to happen is not that they will take risks, at least insofar as the example I gave before, but probably they will decide, I do not want to raise the uncertainties, I do not want to raise the possibility that I might be dragged into an antitrust suit which I know is expensive; I will just stay away from joint line ratemaking altogether and maybe look for another business to get into, one that is less risky.

Mr. **Dettmar**. If I might add, Mr. Chairman, I think it is not just a matter of counseling, but a matter of redress. There is a rather notorious case involving antitrust in trucking, the *Clipper Express* case. It took Clipper Express I believe about 13 years to get to trial and an expenditure of hundreds of thousands in legal fees. It is just a very cumbersome process.

The **Chairman**. Very expensive, much room for delay and discovery. And you can get into court and never get out, right?

Mr. **Dettmar**. That can happen.

The **Chairman**. Gentlemen, thank you very much. And thanks to all witnesses for your participation today and for your patience in waiting so long, particularly this last panel, your patience in waiting to testify.

[Whereupon, at 2:50 p.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. Chairman and Committee Members: The International Brotherhood of Teamsters deeply appreciates the opportunity afforded to our representatives today to testify before this respected committee on the Reagan Administration's proposal entitled—"The Trucking Deregulation Act of 1985"—which would completely deregulate the trucking industry and eliminate the Interstate Commerce Commission.

On behalf of the 250,000 Teamster members that are still fortunate enough to be currently working in the regulated trucking industry,

On behalf of the nearly 80,000 members who have permanently lost their jobs,

In behalf of the nearly 30,000 members who are currently on lay-off status,

On behalf of the more than 13,000 members who are forced into early retirement with reduced Social Security and retirement benefits,

On behalf of the families of our members and retirees who have suffered needless economic and social hardships,

On behalf of the owner-operators, the motoring public, and the consumers of America who have been ravaged and raped by the efforts of the 1980 Motor Carrier Act; this organization's two million members, 14,000 employees, 7,100 elected officers, and its 450,000 retirees stands vigorously opposed to the Reagan Administration's, Department of Transportation's, and the Office of Management and Budget's coordinated, but misguided and ill-conceived, proposal as encompassed in the Trucking Deregulation Act of 1985.

The International Brotherhood of Teamsters would like the record to unequivocally reflect that this organization will never support or compromise on the current Reagan Administration proposal and/or any other similar legislative proposals. Rather we will actively and aggressively oppose such measures before the Congress.

Mr. Chairman, the Teamsters steadfastly hold that the 1980 Motor Carrier Act has devastated the most efficient transportation system in the world; caused needless loss of jobs, or made industry bankruptcies commonplace. However, most regrettably, it has caused needless highway deaths while simultaneously breaking the solemn promise to the American consumer of reduced costs for retail goods. And tragically, it has not benefited the owner-operators and/or new entries.

Mr. Chairman, this organization has religiously attended the ritual of the Motor Carrier Act Oversight Hearings for the past five years both in the U.S. Senate and the U.S. House of Representatives. During the course of these oversight hearings, we have submitted reams and reams of credible and thoughtful testimony, including personal appearances from our rank-and-file members. I think, with all due respect, it is time to stop these charades. It is time to lay aside the academic and intellectual gobbledygook. It is time to stop talking about bureaucratic "numbers" which any intelligent human being knows can be looked at numerous ways to aid one's argument. It is time to lay aside public relations gimmicks and press releases of the Department of Transportation which continually perpetuate a hoax on the American public that everything is well within the trucking industry.

Rather, Mr. Chairman, it is time to place upon the table for examination by this Congress and the American public, once and for all, who are the real winners and who are the real losers on the 1980 Motor Carrier Act and the Department of Transportation's current proposal.

The winners are the unscrupulous large shippers who have exploited both the trucking industry and the small business competitors with a new hidden profit structure of which not one cent has been passed onto the consuming public. The winners are the insurance companies of America which have caused one of the most scandalous, but legitimate, thefts by increasing insurance rates upwards by 200-600%. This is one situation that everyone whispers about wishes would go away, but refuses to do anything about. The winners are the new breed of speculating brokers who treat owner-operators with serf-like wages and working conditions.

The losers, of course, are our members and the Mr. and Mrs. America whose jobs have been senselessly and needlessly traded like pawns on a chess board. The losers are the American consumers who have not realized the gloriously touted results of trucking deregulation at the retail level. The losers are the owner-operators who have not prospered and grown, but have instead fallen to economic hardships. The losers are the trucking industry which have seen a proliferation of bankruptcies, decreased tonnage, shrinking ability for loans for capital improvements, while simultaneously being squeezed by outrageous insurance rates and increased state and local taxes. The losers are the motoring public who have been exposed to unsafe vehicles and operators who have the economic incentive to violate highway laws. The losers are the state and local governments who have to expend more and more scarce local funds for increased enforcement because the Department of Transportation lacks the will or desire to do so. And, with all due respect, Mr. Chairman, perhaps the biggest loser is the U.S. Congress on which the winners, whom I have previously alluded to, have successfully perpetrated one of the biggest con-jobs ever laid before the feet of this respected Congress.

Mr. Chairman, I am not going into a point-by-point rebuttal of the Department of Transportation's proposal, and if I may, I will lay aside for a moment the Teamsters Unions concern for our members and families who have needlessly suffered. Rather, I wish to illustrate that this legislation will needlessly cause more accidents and senseless deaths. Simply, the removal of the carrier fitness test and granting of wide-open entry, lets anyone who can make a down payment on a tractor and lease a trailer, regardless of their prior safety record, jump on a highway and haul even the most dangerous cargo. In all honesty and frankness, the over 35 years of collective bargaining history with our trucking employers under the National Master Freight Agreement has through the years silently but effectively preserved the safety of highways for the motoring public. The International Brotherhood of Teamsters, its related employer associations, individual companies, in addition to the separate, but outstanding program of the American Trucking Association have contributed countless in-kind contributions of staff and resources in addition to the millions upon millions of dollars that are spent annually on behalf of highway safety.

Mr. Chairman, I submit to you in all honesty and frankness, the Department of Transportation's commitment to safety compared to the long historic voluntary commitment by both this Union and responsible trucking companies is like a rain drop falling into the sea. This is not to demean the Department of Transportation, but their lack of commitment to safety is a fact of life we all should recognize. Mr. Chairman, the best ananlogy of our commitment to safety is if tomorrow morning the International Brotherhood of Teamsters, its members and their employers and the American Trucking Association were to eliminate their safety programs, it would have the same impact across the country, economically and socially, as if the private schools in America would close their doors and all the students would have to enroll in their local public school systems.

Mr. Chairman, as the General President of our great International Union, I find that with the increased safety problems that this industry faces, it is hard to accept that the Department of Transportation could in all due conscience present a proposal before this Committtee which only serves to exacerbate the safety problem. If I may, I would like to point out that even the Department of Transportation has admitted that the 17,000 new entrants into the trucking industry since 1980 have caused the problem. As Mr. Ken Pierson, Director of the Bureau of Motor Carrier Safety said, "We had no information on new entrants and no authority to require information from applicants since they were not carriers and not subject to our regulatory authority until granted authority by the ICC." [1]

We have heard repeatedly of the Department of Transportation's and the Interstate Commerce Commission's overriding concern for truck safety. Mr. Chairman, if safety is so important to this department and agency, then why did the Interstate Commerce Commission cut its enforcment staff? Why doesn't the department support full funding for the Motor Carrier Safety Assistance Program? As this committee is aware, the Motor Carrier Safety Assistance program will receive only 14 million dollars instead of the 30 million dollars authorized by this Congress. Is this a commitment to safety, Mr. Chairman?

Mr. Chairman, I need not tell you what a scandalous problem insurance poses in the trucking industry. This industry has been especially hard hit because of deregulation and we believe a further loosening of economic regulations would pose an even more serious threat.

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[1] House Governmnetal Operations Committee, September, 1985.

The International Brotherhood of Teamsters is fully supportive of the insurance standards and requirements set forth by Congress in 1979. We are very concerned by the soaring premiums our organized carriers are forced to pay. There seems to be absolutely no correlation between safety record or prior claims experience in the setting of insurance rates. As an example, we learned recently that a Teamster carrier in Minnesota has been advised that his already high $924,000 annual premiums will be tripled in the very near future. This is not a fly-by-night carrier whose drivers are inexperienced and reckless. Rather, this carrier in his adherence to the safety provisions of his Teamsters Contract has an impeccable safety record and has not filed one simple claim. Mr. Chairman clearly this is neither right nor fair.

However, I am certain that further deregulation, will make the problem worse, just as in 1980 deregulation caused this deplorable situation. We interpret that the Reagan Administration's deregulation bill will maintain insurance and safety standards at the Department of Transportation. What concerns me, Mr. Chairman, is the Transportation Department's appalling record of action in this area. Need I remind this committee that it took the bureaucrats nearly five years to complete the regulations on the 1979 insurance standards. While I hate to speculate, I think it is more than safe to say that the Department of Transportation's enforcement of insurance standards will be minimal. Clearly, they have neither the will nor the capability to actively enforce government insurance requirements. Add the thousands of new carriers that open entry calls for in the new bill, there will be many fly-by-night type carriers operating without insurance. These carriers can barely afford to keep their trucks on the road, let alone pay the exorbitant insurance rates which are the norm today. When these carriers, often the most affected by the pressures of cutthroat competition, are involved in accidents, the whole industry pays.

In conclusion, Mr. Chairman, when we examine the results of the 1980 Act, we can only see a field littered with hundreds of bankrupt companies, over 80,000 unemployed Teamsters and unsafe and unscrupulous new carriers on our Nation's highways. With this view, we cannot and never will support or endorse any further deregulation of this crucial industry.

STATEMENT OF DENIS R. ZEGAR, CO-CHAIRMAN OF THE AD HOC MOTOR CARRIER REFORM GROUP

Mr. Chairman, my name is Denis R. Zega and I am Co-Chairman of the Ad Hoc Motor Carrier Reform Group. I would like to thank you for the opportunity of expressing the views of the Group. The Ad Hoc Group is an informal alliance consisting of shippers, carriers, associations and consumer groups who believe that economic deregulation in the trucking industry benefits all Americans.

We support legislation that would modernize economic regulation of the trucking industry, in order to boost productivity, increase competition, improve truck safety and eliminate outmolded regulations and paperwork.

In the coming years, the United States will face the twin challenges of maintaining a healthy economy at home and also competing in the world markets. If we are going to achieve those goals, we need a strong transportation industry and infrastructure, and that means a productive trucking industry.

Congress took a good first step in this direction in 1980 when it partially deregulated the trucking industry. The experience since then has been very positive, as deregulation has saved shippers and consumers billions of dollars, apart from boosting productivity significantly. However, there is still a lot that needs to be done.

For example, the 1980 law did not go far enough to protect small shippers from across-the-board rate hikes which are collectively set by truckers serving a region. Congress outlawed such pricefixing in other segments of the industry, but small shippers are still vulnerable to this vestige of economic regulation.

Similarly, the Interstate Commerce Commission is still involved in a vast amount of paper shuffling every time a trucker wants to add a new route. This red tape hits small truckers particularly hard.

Finally, while various controls have been lifted at the federal level, many states continue to collect truck taxes and regulate intrastate shipments in a heavy-handed manner, thus eliminating some of the efficiencies made possible by the 1980 law.

Over the past five years, Congress has given careful scrutiny to how the 1980 law has worked. It is now time to move beyond that experience. The problems that will confront our nation as we approach the year 2000 will be different from the problems we faced in the past, and that is why we need legislation which puts a new emphasis on productivity, on competition, on safety, and on meeting the needs of shippers and consumers.

To this end, we urge Congress to enact legislation that would do the following things:

1. Provide for genuine price competition in truck rates, by eliminating pricefixing where it exists at both the national and state levels.
2. Cut needless red tape for any trucker who wants to provide new service, provided they can meet tough federal safety standards.
3. End state regulation of truckers serving a regional or national market, while retaining state regulation for purely local operations that are best regulated at a local level.
4. Transfer any remaining federal regulation of the trucking industry from the ICC to the Department of Transportation, which is already responsibile for regulating truck safety and insurance.

On behalf of the organizations listed below, I would like to thank you, Mr. Chairman, for allowing me to be here today. I would be glad to answer any questions that Members of the Committee might have after all testimony of the panel has been given.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. Proponents of the collective ratemaking system argue that shippers, particularly large shippers, have brought about much of the rate discounting in the trucking industry, which has resulted in below-cost pricing by many carriers. What is your view of this claim?

Answer. The Coalition supports discount rates, particularly with respect to LTL motor carrier service by general commodity common carriers. Although there have been many allegations that these motor carriers have engaged in below-cost (predatory) pricing, there has been no proof of these allegations. In the absence of such proof, the Coalition believes that discount pricing has been stimulated by the impact in the marketplace of the Motor Carrier Act of 1980 and that this is all to the good. Indeed, the allegations of predatory pricing by such carriers have been investigated by the Interstate Commerce Commission and other agencies of government. These charges have been found wanting and without evidentiary foundation.

For example, in May 1982, and again in October 1982, the Interstate Commerce Commission was asked by numerous carriers and the American Trucking Associations, Inc. to establish standards for review of these new discounting and innovative pricing techniques. The clear intent of these requests was to restrict their publication and approval. In dismissing these petitions (*Lawfulness of Volume Discount Rates—Motor Common Carriers,* 365 I.C.C. 711 (1982) and No. 38872, *Petition for Declaratory Order—ATA Lawfulness of Discount Rates,*) [not printed] served on October 1, 1982, the ICC declined to set any new standards and provided a detailed discussion regarding the adequacy of existing standards. It also discussed why it believed that the carriers' concerns were misplaced and inconsistent with the competitive pricing encouraged by the Motor Carrier Act of 1980. Despite the analyses in these decisions, the Commission began another inquiry in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.* As a result of this inquiry, the Commission issued a report, served on September 13, 1983. A copy of this report is enclosed for your review.[1]

In its report, the Commission concluded that there is no basis for departing from the conclusions reached in the *Discount Rates* decisions, previously referred to. To the contrary, the Commission concluded that its investigation reinforced the conclusions in those decisions and added that the new pricing practices have greatly benefitted the shipping public and have led to increased carrier efficiency and heightened market sensitivity. Furthermore, the Commission concluded that restrictions on innovative and reduced rates are unnecessary and would have a chilling effect on legitimate competition.

More recently, on November 7, 1985, a witness for the General Accounting Office, testifying before the Surface Transportation Subcommittee of the Committee on Public Works and Transportation, House of Representatives, concluded, in submitting the report of the GAO, that there is no provable basis for determining the existence of predatory pricing by LTL motor common carriers of general commodities. A copy of this report is also enclosed for your review. As you will note, the GAO found a substantial amount of discount pricing, but no conclusive evidence relating to the existence of predatory pricing.

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[1] The report was retained in the Committee files.

Question. What do you consider to be the most important and necessary aspect of regulatory reform?

Answer. The Coalition for Motor Carrier Regulatory Reform believes that the two principal reforms that would be most helpful relate (1) to the elimination of antitrust immunity for collective ratemaking at both the state and federal levels and (2) to end state regulation of truckers serving a regional or national market, while retaining state regulation for purely local operations that are best regulated at a local level.

The need for these reforms was detailed by numerous parties and was reflected in the testimony, for example, of the National-American Wholesale Grocers' Association, the Private Truck Council of America, the Private Carrier Conference, Inc. of the American Trucking Associations, the National Industrial Transportation League and others.

I would only emphasize on behalf of the Coalition that the elimination of antitrust immunity for collective ratemaking at the federal level with respect to interstate ratemaking activities of LTL general commodity motor carriers with respect to joint rates and general rate increases must, for maximum effectiveness, be coupled with a parallel elimination of immunity with respect to state level collective ratemaking. This necessary linkage will foster more rate competition and independent pricing actions by such motor carriers at both the interstate and intrastate levels. Moreover, preemption of entry restraints at the state level will facilitate the creation of new carriers and the expansion of existing carriers into the intrastate realm, thereby maximizing the impact of the elimination of antitrust immunity with respect to both interstate and intrastate transportation service rendered by LTL motor common carriers. These are the real "dollar" issues which, if resolved in this manner, would most advantageously continue in the LTL sector the cost based rate competition that has become so effective in the TL sector of the trucking industry, particularly at the interstate level.

There are, of course, additional reasons justifying plenary federal preemption of inconsistent state economic regulation over motor carriers, whether they be LTL or TL. As has been indicated, these have been detailed in considerable depth in the testimony of numerous parties at the September 27, 1985 Motor Carrier Reform hearings. Essentially, such an approach to preemption would permit any interstate carrier, be it for-hire or private, to conduct intrastate operations on a parallel basis with the same trucks and drivers used for interstate operations without entry limitations and without rate competition restraints imposed, as is now so frequently the case, by individual state regulatory bodies. To date, seven states, namely, Arizona, Alaska, Florida, Delaware, New Jersey, Wisconsin, and Maine have already totally deregulated. The benefits have already been demonstrated. Other states are considering serious regulatory reform in 1986, including Georgia and Indiana. Nevertheless, the remaining states impose considerable restraints on entry and rate competition, to the great detriment, service and pricewise of the shipping public.

CONCLUSION

In conclusion, therefore, the Coalition for Motor Carrier Regulatory Reform earnestly recommends to the Surface Transportation Subcommittee passage of legislation which would accomplish these goals of (1) eliminating antitrust immunity for collective ratemaking by motor carriers at the state and federal levels and (2) preventing states from imposing entry and rate competition restraints on motor carriers operating within their borders, particularly with reference to motor carriers that are operating substantially in interstate commerce with the same fleets that could otherwise be utilized for parallel intrastate service. To these ends, therefore, the Coalition respectfully requests the Subcommittee to draft and introduce legislation which would accomplish these goals that are paramount to keeping the momentum for motor carrier reform for the remainder of this decade initiated originally by the Motor Carrier Act of 1980.

STATEMENT OF JAMES P. CARTY, VICE PRESIDENT, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman, members of the Subcomittee, my name is James P. Carty, and I serve as the Vice President for Government Regulations, Competition, and Small Manufacturing for the National Association of Manufacturers. NAM is a voluntary business association of over 13,000 corporations, large and small, located in every state. Members range in size from the very large to over 9,000 smaller manufacturing firms, each with an employee base of less than 500. NAM member companies employ 85 precent of all workers in manufacturing and produce 80 percent of the nation's manufactured goods. NAM is affililated with an additonal 158,000 businesses through it Associations Council and National Industrial Council. Our members rely heavily upon motor carriers and the cost of transportation is an essential part of the overall cost of doing business. Thus, efforts to reduce or control those costs are supported by our membership.

NAM has been involved in the movement to deregulate the trucking industry for many years. We are very pleased with the several proposals for trucking deregulation which have emerged over the last two months, including Congressman Moody's legislation, H.R. 3222, as well as the recent Administration proposal. It is good to know that progress is being made.

Although NAM was not able to participate during the hearings on oversight of the Motor Carrier Act of 1980 held by this Subcommittee on September 9th, it is our understanding that a vast majority of the witnesses were positive in their assessments. NAM would like to take this opportunity to concur with this conclusion, as was indicated in the correspondence of September 12th sent to Chairman Packwood by NAM President Alexander Trowbridge. I would note that my comments on behalf of the Association will refer solely to the transportation of property and not to the household goods sector of the industry, unless otherwise indicated.

The evidence provided to the Subcommittee during the September 9th hearing focused on how successful the partial deregulation contained in the Motor Carrier Act of 1980 has been thus far. I think you can agree that it is time to move on and not, as some opponents of deregulation would argue, simply to sit back and continue to monitor the situation. Congress currently has before it two slightly different proposals , H.R. 3222 and the Administration's package

NAM supports the general provisions of both measures and would encourage their use as models for legislation which may be introduced in the Senate. I would like to highlight what NAM considers the most important aspects of each, since both go a long way toward achieving the reforms advocated by our association for a number of years.

In fact that the Administration has submitted legislation is, by itself significant in revealing support for the economic deregulation of the transportation industries and underscores the President's remarks in his 1985 State of the Union address.

The bill proposed by the Department of Transportation would completely eliminate what remaining economic regulation exists. Regulatory barriers to entry, as well as rate and tariff filings, publications, and approvals would be eliminated. In our view, these regulations constitute the bulk of what Secretary of Transportation Elizabeth Dole referred to in her letter of transmittal to Congress as "an expensive paper chase with no offsetting benefits to consumers." Because of the economic deregulation contained in Section 4 of the DOT trucking deregulation legislation, the bill proposes to amend current law so the filings for approvals, waivers, and exemptions would no longer be necessary. This should result in a tremendous reduction of bureaucratic paperwork and lower administrative costs to the trucking industry. In the competitive environment which should continue to proliferate, these savings would be passed on to shippers, and the American consumer would be the ultimate beneficiary.

The DOT bill also would remove the antitrust immunity still enjoyed by motor carrier rate bureaus in fixing interstate joint-line and multi-line rates, and instead subject the industry to the provisions of the Clayton Act. This has been one of NAM's primary goals since the release of the findings of the Motor Carrier Ratemaking Study Commission in 1983.

In order to prevent individual states and interstate agencies from filling the vacuum left by federal deregulation, thereby voiding many of its benefits, there is a specific provision to prevent"encroachment" by states and their respective regulatory bodies from enacting laws and enforcing regulations currently subject to federal oversight by the Interstate Commerce Commission and eliminated by this legislation. It also commissions a federal study of existing state laws and regulations in order to determine the adverse effects, if any, on interstate commerce.

Finally, the Administration's legislation addresses many of our other concerns: the clarification of backhaul allowances would be extended to all industries, instead of being limited to the food and grocery industries; the remaining regulations surrounding the leasing of trucks would be eliminated and, where applicable, be placed under the jurisdiction of normal commercial law; the treatment of disputes involving receipts and bills of lading would be placed properly under the applicable state law or the Uniform Commercial Code.

In terms of accomplishing the policy objectives of NAM, the Administration's bill is certainly adequate. However, H.R. 3222 goes even further in many respects, although it is somewhat weaker in others. (It does not, for example, cover the household goods sector.) Perhaps its major attraction is the innovation of the National Carrier concept.

As defined in H.R.3222, a National Carrier is a motor carrier of property serving three or more contiguous states. By electing to be designated as "National," a carrier would be subject solely to federal regulations regarding rates, routes, or service; no state could enact legislation or enforce regulations relating to interstate or intrastate rates, routes, or services of a National Carrier. This would mean, for instance, that National Carriers could not engage in pricefixing to establish intrastate rates, even though the United States Supreme Court just this year in *Southern Motor Carriers Rate Conference, Inc. v. United States* ruled that such arrangements are legal if allowed by state law. Thus, the productivity and efficiency gains which could be attained through federal deregulation would be realized sooner through the creation of National Carriers than through the simple deregulation and study of state laws and regulations contained in the DOT proposal.

The provisions of H.R.3222 would apply only to firms which qualify and elect to become National Carriers. States would be free to enact and enforce legislation and regulations pertaining to intrastate shipments by other than a National Carrier. The NAM believes that this is an important provision in maintaining state supremacy in a wholly intrastate area.

Another much needed provision of H.R.3222 is the inclusion within the National Driver Register of a methodology to identify unfit drivers and prevent them from going state to state in order to obtain driver's licenses if the original issuing state has suspended or revoked the driver's permit.

In addition, access to distribution facilities as well as terminals would be assured under H.R.3222.

Safety concerns within the industry would remain under the oversight of DOT under both proposals, although H.R.3222 would establish a new Motor Carrier Administration within DOT. Such an agency may not be necessary, as most of the functions of the proposed bureaucracy could be handled easily by the existing Federal Highway Administration.

While the two proposals obviously contain some differences in approach, I would emphasize that NAM views these differences merely as various means toward a much needed end. On the whole, the similarities far outweigh the differences. Antitrust immunity would be removed from the industry, which would become subject to the Clayton Act. Entry, rate and route regulation by the federal government would be eliminated. The current mire and confusion surrounding backhaul allowances would be clarified. Safety and insurance issues would remain a federal concern under the purview of the Secretary of Transportation. They both present useful proposals toward more uniformity among state regulations.

Should separate legislation for Senate consideration emerge as a result of these hearings, NAM would encourage that it resemble closely one or both of these proposals in order to speed possible enactment. Ideally, such a measure would include provisions to eliminate antitrust immunity for joint-line and multi-line rates; establish the concept of a class of National Carriers; eliminate entry, rate, route, and service requirements, regulations and filings while retaining a financial responsibility test similar to the airline industry in order to guard against so-called "fly-by-night" operations; provide for the placement under the appropriate commercial law for leasing, receipts, and bills of lading; extend the clarification of backhaul allowances beyond the food and grocery industries to all shipping interests; and maintain and perhaps strengthen federal safety requirements under DOT. Any further deregulation that could be enacted would be welcome since such legislation could only enhance the productivity and efficiency gains which have resulted from the enactment of the Motor Carrier Act of 1980.

I appreciate the opportunity to appear before you on behalf of NAM's membership. If you have any questions, I would be happy to respond.

National Association of Manufacturers,
November 14, 1985.

Hon. Robert Packwood,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: Thank you for the opportunity to respond to the questions of the Commerce Committee Majority raised by the testimony which I submitted on September 27th on behalf of the National Association of Manufacturers, favoring further economic deregulation of the trucking industry.

Concerning the premise of the first question in which you ask about the importance to shippers of federal preemption of state regulation, I believe I should clarify the position of NAM on the issue of preemption. We firmly believe that there are areas where state regulation is preferable to blanket federal preemption; however, where such state regulation interferes with the free flow of interstate commerce and does not facilitate the operation of a free market economy, then federal preemptive legislation may be justifiable. Such a case is the trucking industry, where ther laws and regulations of several states adversely affect interstate shipments. On the other hand, it should be recognized that states and local governments have the primary interest in controlling the operations of wholly or basically instrastate hauling and trucking companies and in the general area of safety.

The National Carrier concept, as envisioned in HR3222, strikes an appropriate balance between the interests of the states in controlling their own commerce and the interest of the federal government in encouraging effeciency in interstate commerce. We would strongly endorse such a provision in any legislation to economically deregulate the trucking industry which may be considered by your Committee. We are not wedded, however, to any specific definition or criterion and would be open to discussion should the Committee wish to strengthen or weaken the requirements as currently proposed in HR3222.

Through discussions with our membership and with other organizations with which we are affiliated, a provision facilitating the flow of interstate commerce by overriding restrictive state laws is absolutely essential. A bill without such language would be considered toothless. It would not help, for example, to terminate filing requirements at the Interstate Commerce Commission only to have 50 states institute their own filing requirements with 50 different versions.

Even under the current situation, shippers in heavily regulated, geographically large states are hampered in serving customers on a competitive basis with out-of-state shippers since they often are forced to pay higher rates to transport their goods due to intrastate pricefixing. This includes shipments from warehouse facilities to outlets within a state, even if cargo originated in another state. As you are aware, the ability of rate bureaus to set intrastate rates collectively, was upheld recently by the United States Supreme Court, if state laws allow such collusion.

In addition, less-than-truckload shipments are heavily dependent upon intrastate operating authority; if, as has happended in some cases, an innovative and efficient firm is denied intrastate operating authority because of objections byn large carriers who have benefitted under the protections of regulation, it is often the small and rural shipper and receiver who are the most hurt.

Finally, regarding your second question, NAM neither supports nor opposes the creation of a separate motor carrier administration within the Department of Transportation. Perhaps the best solution to ameliorate the concerns of truckers would be a simple reorganization of the various agencies dealing with trucking issues (such as the Bureau of Motor Carrier Safety, the Office of Research and Special Programs, and the Federal Highway Administration) under one administration within an existing agency which would be renamed to highlight its new responsibilities.

I hope this information has been useful. Please let me know if NAM can be of any further assistance as the Committee continues its consideration of this issue.

Sincerely,

JAMES P. CARTY,
Vice President, Government Regulation,
Competition and Small Manufacturing.

STATEMENT OF ROBERT L. WITTENBURG, GROSS COMMON CARRIER, INC.

Thank you, Mr. Chairman. My name is Robert Wittenburg. I am the Director of Marketing and Commerce for Gross Common Carrier, in Wisconsin Rapids, Wisconsin. Gross is a motor carrier transporting general commodities in both interstate and intrastate commerce with its predominant operations between points in the upper midwest states of Illinois, Indiana, Michigan, Minnesota and Wisconsin. In 1984 our revenue was $22 million; our average weight shipment was 2100 pounds and our average haul only 195 miles. We are a member of several of the major motor carrier rate bureaus. I am here today to urge your subcommittee not to approve the DOT bill or any other such bill which would further deregulate the general freight trucking industry.

If the proposed bill were ever to become the law of the land, it would produce several undersirable results which are not in the public interest and particularly detrimental to the trucking industry. I speak from experience as the motor carriers operating between points in intrastate commerce in Wisconsin have been deregulated for almost 3 years.

After the initial year of little change, the rate wars began. Since then, there has been widespread rate cutting. The resulting rates bear little relation to costs. Rates have become extremely depressed on shipment moving between key points. Conversely, the rate applicable on shipment originating or terminating at the smaller communities have increased substantially. Also, as the rates to and from the smaller towns increase, service to and from those same towns decreases. The reason for this is there is not a sufficient volume of freight to and from these points for any carrier to provide service on a regular basis.

Another major problem in the deregulated Wisconsin environment, which would occur on a nationwide basis if a federal deregulation bill is enacted, is the lack of information as to rates and rules maintained by competitive carriers. This occurs because, when motor carriers are no longer required to publish and file their rates and rules in tariffs, then most of the information obtained by a shipper or a carrier with respect to competitive rates will be based on hearsay. Since pricing formats no longer remain uniform, it becomes extremely difficult, i.e., more costly and time consuming, for a carrier and/or a shipper to evaluate competitive circumstances and develop competitive rate proposals.

The Trucking Deregulation Act of 1985, or a similar bill, would surely eliminate the system of joint rates and through routes that is in place today. About one fourth of our shipments and one fourth of our revenue is derived from the transportation of shipments moving in joint line service. In order to meet the routing needs and desires of our customers, we must have inter-change arrangements at numerous points with a great many carriers. Gross would no longer be willing to participate in joint through rates with these carriers if the antitrust immunity for collective ratemaking is eliminated. Many of our interline carriers are also our single line competitors. We would not risk the antitrust consequences. The result would require the shipping public to pay higher combination of local rates whenever shipments move in joint line service. The rates on shipments moving to and from the smaller points will more than double.

Elimination of economic regulation will soon dismantle the rational relationships that currently exist in the rate structure between classes of freight, among the weight brackets and according to distance. It is interesting to note that even though Wisconsin intrastate is deregulated, the shippers and the carriers still refer to the basic interstate rules and rate structures in their efforts to establish some rational basis for rules and rates. However, once there is total federal deregulation, literally thousands of unrelated rules and rates will soon replace the rational relationships now in place. The net result will be a much wider divergence between the level of rates paid by the medium and small sized shippers compared to the level paid by the larger shippers for essentially the same transportation service.

There have been thousands of new entrants in the trucking business since 1979. Although a few of the truckload specialists have done well, many of the new entrants soon departed. Gross Common Carrier and most of the other long-time LTL motor carriers of general commodities well known their costs. The circumstances surrounding pickups, deliveries, handling of the shipper's commodity, line-haul service and risk assessment are all able to be reasonably calculated. The task would become increasingly more difficult, time consuming, and expensive, however, in a deregulated environment where each shipper with respect to each shipment, on the hundreds of different transportation rules, regulations, packaging requirements, credit terms and liability matters. Deregulation means and administrative nightmare for shippers and carriers of all sizes.

In the final analysis, what deregulation of transportation does is to permit the great economic power of the large shipper to dictate rate levels, rules and regulations. That leaves the carrier's remaining customers as the ones that must provide the necessary revenue to the carrier if a profit is to be earned.

Thus, this nation does not need further deregulation. Instead, it needs and ICC that actively enforces the present provisions of law relative to discriminatory and below-cost rates. Such a policy will ensure comparable rates to all shippers for like service, and a fair profit to efficient carriers.

Thank you.

STATEMENT OF MARK J. ANDREWS, CHAIRMAN, LEGISLATIVE COMMITTEE, TRANSPORTATION LAWYERS ASSOCIATION

My name is Mark J. Andrews. I am a partner in the law firm of Verner, Liipfert, Bernhard, McPherson, and Hand, Chartered, and I am also Chairman of the Legislative Committee of the Transportation Lawyers Association (TLA).

TLA is a specialized bar association founded in 1937 as the Motor Carrier Lawyers Association. Today, TLA's members, located throughout the country and in Canada, represent carriers of all modes on the full gamut of legal matters, ranging from regulatory compliance to labor law, securities law, mergers and acquisitions, accident cases, collection matters and general corporate work. Because of our membership's day-to-day, hands-on involvement with the trucking industry and the regulatory system with which it must deal, we believe that we have a unique perspective on the legislative proposals that are the subject of this hearing.

In TLA's view, all three of the proposals under consideration are based upon a false premise. They all assume that the partial deregulation wrought by the Interstate Commerce Commission (ICC) under the Motor Carrier Act of 1980 has been successful and that more of the same will be even better.

This false premise rests, in turn, on little more than assertions of success trumpeted by Federal agencies who were never happy with the compromise legislation enacted in 1980. The unhappiness of the Department of Transporation (DOT) and the Interstate Commerce Commission (ICC) has been expressed over the intervening five years by their diligent efforts to undermine the letter and intent of the Motor Carrier Act of 1980. Their efforts necessarily required assertions that this subversion of legislative intent was salutary. Despite ICC and DOT assertions to the contrary all is not well.

I will briefly outline several of the areas in which the facts do not equate with the successes claimed.

ENTRY

The ICC appears most proud of the fact that its efforts have resulted in a doubling of the number of regulated carriers since 1980. However, the flood of new entrants has not come without a price.

In order to accomplish its version of "reduced" entry barriers, the ICC has taken a three-pronged approach. First, it has ignored any and all opposition by the simple expendient of dismissing whatever evidence a competitor introduces. The statement of one Commissioner branding opposition to entry applications as "black-mail" and a "scam" best exemplifies the reception given those who dare to raise objections.[1]

It is, thus, as true today as it was when TLA made the observation during the first oversight hearing[2] that not a single application has been denied on the basis of a protestant's evidence. The ICC's lack of interest in dealing with views that run contrary to its "grant everything" philosophy has extended even to the Federal Highway Administration (FHA) and the ICC's own consumer protection office (OCCA). Despite FHA and OCCA intervention on safety grounds, authority nonetheless has been granted time and again.[3]

The second prong of the ICC's entry policy is its obsession with granting authority broader than applicants desire or that the Motor Carrier Act of 1980 permits. One need only refer to the dismal history of the Commission's implementation of the Congressional directive "to reasonably broaden the categories of property authorized" and to "eliminate unreasonable or excessively narrow territorial limitations,"[4] for corroboration.

Immediately following the passage of the Motor Carrier Act of 1980, the Commission issued "guideliness" concerning the commodity and territorial descriptions which it would accept. In 1981, the United States Court of Appeals for the Fifth Circuit[5] found that Commission's "guidelines" as to what constituted reasonable service descriptive ran counter to the intent of Congress in several respects. The Court required the ICC to promulgate new rules that complied with the law.

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[1] Testimony of Commissioner Heather Gradison before the House Surface Transporation Subcommittee on November 16, 1983, transcript at 53-54.

[2] Statement of James M. Doherty before the House Surface Transportation Subcommittee, 1981, at page 4.

[3] See, e.g., *Department of Transportation* v. *ICC*, 733 F2d 10 (D.C. Cir., 1984) and Docket No. MC-145715 (Sub No. 231), Bell Trucking, Inc.—Extension (unprinted, decided April 23, 1985).

[4] 49 U.S.C. §§ 10922(h)(1); 10922(h)(1)(B)(iv).

[5] *American Trucking Associations, Inc.* v. *ICC*, 659 F2d 452 (5th Cir., 1981).

Because the Commission not only failed to propose revised rules, but also continued to issue broad authority in the very manner previously condemned, it was necessary in 1982 for the Court to issue a writ of mandamus commanding that the Commission abide by the Court's previous determination.[6] Although revised rules were grudgingly put into effect in 1984, the ICC continues to "thumb its nose" at the Court as seen in individual cases.[7] Indeed, just this month the Fifth Circuit once again has ruled that the Commission's revised 1984 rules do not comply with its 1981 decision and the Motor Carrier Act of 1980.[8]

The third prong of the Commission's entry policy has been its total disregard of an applicant's financial fitness which—in the real world as opposed to the deregulatory dream world—is the best indicator of an applicant's ability to maintain its trucks, pay escalating insurance premiums, and reduce the incentives for owner-operators to cut corners. Instead of taking a hard look at an applicant's financial fitness, however, the Commission has limited its fitness inquiry to a pro-forma requirement for a one-sentence declaration of familiarity with DOT rules. While it is true that elimination of a financial fitness inquiry was not upheld by the only appeals court to examine the issue, the fact that the policy withstood the narrow scope of court review of agency rulemaking does not mean it is a wise or a good policy in this era of the "insurance crisis" and continuing rate discounting.

Through the use of these and similar tactics, the Commission's actions have eliminated the balancing which the National Transportation Policy of 49 U.S.C. § 10101 requires. In raising the Congressional admonition to promote competition to the sole consideration, the other equally important aspects of safety, efficiency, sound economic conditions among carriers, the common carrier obligation, and preservation of service to small communities have been given short shift.

FINANCIAL CONDITION

The ICC's entry actions have had an adverse impact for it appears that an increasing number of carriers are chasing an inadequate supply of traffic. The ICC's own testimony over the past five years documents a reduced volume of traffic being transported by 100 of the largest motor common carriers. The Regular Common Carrier Conference recently testified before this Committee that its members, who transport the majority of the small, general freight shipments in this country, are handling traffic at the lowest volumes since the current statistical series began 18 years ago. The ATA has corroborated this testimony on an industry-wide basis.

The obvious inefficiency of overcapacity insures that the high rate of carrier bankruptcies will continue. One industry analyst projects that carriers with gross annual revenues of between $50 and $250 million face a 15-20% chance of bankruptcy within the next 12 months. Carriers with revenues below $50 million also face a 15-20% bankruptcy rate because that category includes all new entrants, many of which quickly fold.[9]

In sum, the financial condition of the industry is considerably weaker than it was in the late 1970's.[10]

CONCENTRATION

While the smaller carriers come and go with unsettling rapidity, the concentration foreseen by TLA in 1981 is taking place among the large carriers. Excluding UPS, over 50% of the profits from the less-than-truckload market are divided among eight carriers.[11] Contrary to the DOT and ICC philosophy that entry barriers are almost non-existant, the barriers to entry in the nationwide LTL market are massive.[12] Only one post-1980 carrier, entered the long distance LTL market, and that carrier—Leaseway—discontinued its efforts earlier this year.[13]

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[6] *American Trucking Associations, Inc.* v. *ICC*, 669 F2d 957 (5th Cir., 1982).

[7] See, e.g., *Port Norris Express Co.* v. *ICC*, F2d 1280 (D.C. Cir., 1985); *Port Norris Express Co.* v. *ICC*, 757 F2d 58 (3rd Cir., 1985) and the cases cited therein.

[8] *American Trucking Associations, Inc.*, v. *ICC* (No. 84-4389, decided September 13, 1985) —— F2d ——.

[9] "Mega-Carriers May Dominate Market," The Journal of Commerce, June 27, 1985 at 7A.

[10] "The Motor Carrier Act of 1980: Five Years Later," The Journal of Commerce, June 27, 1985 at 1A.

[11] "LTL Concentration," Transport Topics, April 15, 1985.

[12] "Mega-Carriers May Dominate Market," The Journal of Commerce, June 27, 1985 at page 7A.

[13] "Leaseway Transfers LTL Assets," The Journal of Commerce, February 25, 1985, at 1A, 5A.

If the trend continues, it is estimated that 80% of the LTL market will be controlled by as few as seven carriers.[14]

SAFETY

Both DOT and the ICC have testified that they have seen no adverse safety effects resulting from the lowering of entry barriers and the resulting increased competition. Only one week ago, this Committee heard testimony from an insurance industry representative which parallels our own testimony (see above), that the ICC has failed to adequately screen out unsafe carriers following the enactment of the Motor Carrier Act of 1980. The poor safety records of many new entrants have put a tremendous strain on the insurance industry, leading in part to the present crisis in obtaining adequate coverage at a reasonable price.[15]

SMALL COMMUNITY SERVICE

The DOT and the ICC have consistently maintained that service to small communities is as least as good as that provided prior to 1980. These assertions are suspect. For example, Governor John V. Evans of Idaho, at the recently held Western Governors Conference, reported that trucking deregulation has led to poorer service in small Western states.[16]

RATES

The ICC continues to refuse to establish regulatory guidelines in connection with the rampant discounting and other proliferating rate practices for fear that any action would inhibit marketplace forces. However, failure to act spawns new problems. For example, it is becoming apparent that numerous motor common carriers, now bankrupt or out of business, have been offering shippers discount rates, without ever bothering to publish the discounts in ICC tariffs as required by law. As a result, receivers for these defunct carriers are now billing shippers for millions of dollars representing the difference between the unpublished discounts and the lawful tariff rates.[17]

It should also be noted that the small shipper is apparently not benefitting from all the furious discounting activity over which the Commission has presided so passively.[18]

COMPLAINTS

The ICC as an indicator of success of its implementation of the Motor Carrier Act of 1980 points to the fact that it is receiving fewer and fewer consumer complaints. TLA previously pointed out that the ICC terminated its consumer "hotline" in 1981 and does little or nothing about those complaints that are received.[19]

The foregoing problems and others continue to plague the industry and the public despite the fact that five years have passed since enactment of the Motor Carrier Act of 1980. In our observation, the ICC's responses to those problems have amounted to little more than fiddling while Rome burns. This is not because there is no meaningful role for the ICC to play, but rather because the agency's "free market" fixation leads it to avoid, wherever possible, using the powers it has.

The predictable bureaucratic claims of success put forth in support of past implementation of the Motor Carrier Act of 1980 are erroneous. Equally, the proposed legislative solutions are no solutions at all, because they basically would perpetuate the ICC's malign neglect of the indsutry's real-world problems. Instead, Congress should admonish the ICC to carry out its duties in the manner intended five years ago.

In the process of proper implementation, the ICC should be instructed to deal with the problems it refuses to face. For example, the ICC should impose flexible, pragmatic but meaningful limits on rate discounting and practices. It should retain the motor carrier financial auditing and reporting system it proposes to eliminate. The ICC should make meaningful inquiries into the fitness and ability of motor carrier applicants to conduct safe operations. Instead of compiling lists of minority and women owned trucking companies, the ICC should investigate the root causes of the insurance crisis, the high bankruptcy rate, overcapacity and other factors which force these very carriers out of business.

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[14] "Mega-Carriers May Dominate Market," supra at 7A.

[15] Testimony of Thomas R. Shea before the Senate Committee on Commerce, Science and Transportation, September 20, 1985.

[16] "A Wide-Open Economy Has Drawbacks for the West," New York Times, September 1, 1985 at E5.

[17] "Unpublished Truck Rates Yield Balance-Due Bills," The Journal of Commerce, May 13, 1985, at 1A, 7A.

[18] "The Motor Carrier Act of 1980: Five Years Later," supra, at 1A.

[19] Statement of John S. Fessenden, before the House Subcommittee on Surface Transportation, 1982 at 13.

When the ICC's own chairman publicly characterizes the motor carrier regulatory activities of his agency as mere paper shuffling, as he has before this Committee, it is, of course, tempting to draw the conslusion that the agency's authority over motor carriers should be abolished. We would suggest, however, that the easy conclusion is the wrong one to draw in this instance. Given the problems facing the trucking industry today, the Commission should be required to utilize its existing and adequate regulatory powers in an effort to resolve or at least ameliorate these problems. Five years of experience suggests, however, that the ICC will correct its course only if Congress calls an end to the ICC's "shell game," and demands performance.

With respect to the three bills specifically under consideration in these hearings, we draw two conclusions. First, it seems fruitless to debate minor variations among the three bills—especially when the text of only two of them has been made public. Secondly, the limited time available in the waning weeks of this Congressional session might better be devoted to addressing the real problems of the trucking industry, as so eloquently described in the testimony of ATA and RCCC, rather than in ratifying chaos by enacting any of the bills under consideration here.

Statement of H.W. Clements, Director of Traffic, Holmes Transportation, Inc.

I have just reviewed the Trucking Deregulation Act of 1985 submitted to Vice President George Bush in his capacity as President of the Senate by Mrs. Elizabeth H. Dole, Secretary of Transportation. The bill seeks to totally eliminate economic regulation of motor carriers by the Interstate Commerce Commission.

Holmes Transportation, Inc., Framingham, MA is a common motor carrier which has been operating in the Northeast for over 50 years. Our revenues approximately $55,000,000 yearly which makes us a substantional regional carrier but certainly not comparable in size or revenues to the transcontinental carriers. We have served the urban, suburban, rural and remote areas of New England, New York, New Jersey and Pennsylvania. We employ 1000 people, many of whom are Teamsters, and operate some 1200 pieces of equipment. We maintain 21 terminals to serve our customers throughout the above described area. We offer dependable, efficient service in our area of operation.

In her remarks to Vice President Bush and Speaker of the House, Thomas P. O'Neill, Mrs. Dole states that the reforms advanced by the Motor Carrier Act of 1980 have worked well. It is more correct to say that the Interstate Commerce Commission has not administered the Motor Carrier Act as Congress intended and many are not satisfied. Mrs. Dole also refers to more liberalized entry which flooded the industry with new truckload type carriers, many of whom have just as quickly exited the industry. The major result of liberalized entry has been the expansion of the operating authority of the larger carriers who are now able to offer service throughout the country.

The greater competition anticipated has not materialized because more the 50% of interstate traffic is now concentration in the hands of the 10 to 50 largest carriers. The net effect of the Motor Carrier Act of 1980 has been less real competition and the net effect of further deregulation as proposed under this bill will be even less competition.

The new bill seeks to eliminate the Interstate Commerce Commission's authority to control rate discrimination and predatory pricing. Although the Commission has ignored it's responsibilities under the present law, shippers and carriers must have protection from discrimination. The antitrust laws which would take effect in the absence of provisions in the Motor Carrier Act do not provide control over discrimination and little control over below cost pricing. There is little doubt that below cost pricing has caused some insignificant less than truckload carriers to close their doors. Discounts which produce obvious below cost charges are permitted to become effective by the Commission. No discount is too deep for the Commission to approve. . . . if, indeed, they have reviewed the matter at all. The Commission has a duty to maintain a viable, efficient trucking industry. There is no need for a new law when the present law has not been adquately enforced. In our own case, revenue growth has been hampered over the past three years because of the necessity of protecting accounts from excessive and discriminatory pricing.

The proposed bill advocates the abolition of tariffs; an action which will confound anyone seeking to meet competition or obtain information about competitive rates. Tariff files have been an integral part of this industry since 1935. It will be impossible for any shipper to compare carrier rates or to check the competitive filings of his competitors. Tariffs are a reasonable and practical way to dispense rate information and should be retained.

The bill also proposes to eliminate collective ratemaking and classification. This particular proviso should be of great concern to shippers and carriers alike. Rate bureaus are the medium through which collective ratemaking is conducted. The process has allowed the orderly and equitable handling of all rate matters since the inception of the Interstate Commerce Act. No product has ever been kept from the market place because of collective ratemaking. The shipping public, through the Act and the Interstate Commerce Commission, has been able to move freight under reasonable rates. The cost of transportation has always been a relatively minor portion of the total cost of producing and marketing a product. Collective ratemaking has allowed the shipper a forum to air his complaint or explain his ideas about the rate structure. Collective ratemaking permits the maintenance of a general level of rates and rules particularly for carriers of less than truckload traffic. The shipping public is now faced with many differing rate levels in the same territory which makes it difficult to select the most economical route. If we are to provide the public with sane rate structures, collective ratemaking must be preserved. I can certainly predict chaos and complaint if this proven method of order and equity is eliminated especially when there is no public support for elimination. The larger shippers whose volume has always allowed them to move their traffic at favorable rates are the only people clamoring for further deregulation. There simply is no need.

I am appalled that the Administration would consider doing away with Classification . . . the one element of transportation that even the most ardent deregulators would keep in effect. The purpose of classification is to codify the various transportation characteristics of freight into a limited number of classes which are recognized throughout the industry. The classification system allows shippers and carriers to speak a common transportation language. To sacrifice classification in this frantic rush toward deregulation is tantamount to consigning the motor carrier industry to a hopeless morass of paperwork. If each carrier is to maintain his own classification, the confusion caused by the many tongues at the Tower of Babel will be nothing compared to the chaos following the death of common classification.

In the matter of through routes and joint rates, the elimination of regulation will cause more problems than the imagined evils of collective ratemaking. Carriers would be forced to establish local, single line rates. This, in turn, would cause carriers to use combinations of local rates when transferring freight from one carrier to another. Shippers would pay more for services they now get at reasonable joint rates. In effect, shippers would divert traffic from smaller local and regional carriers to the longer haul, transcontinental type of carrier. This will allow these carriers an even larger share of the increasing concentration of traffic in a few carrier's hands. Consider the plight of the shipper in a remote location who gives all his freight, both short haul and long haul, to his local carrier. He depends on this carrier to select the cheapest and most efficient route for points which the local carrier must transfer. With no collective ratemaking on joint rates, no classification and no tariff filings, how in the name of heaven is that shipper to know what is going on. He can look forward to poorer service and higher rates.

Lastly, the Department of Transportation bill would do away with carrier quarterly and annual reports. Carriers will be unable to develop and use the cost information so necessary to efficient management. The shipping public would likewise lose the residual benefit of financial and statistical information such reports provide.

I urge that the Subcommittee on Surface Transportation reject totally the proposed Trucking Deregulation Act of 1985. There is no public outcry, no common carrier desire nor any need at all to further deregulate this industry. What is needed is a period of stability to help the industry recover from the recessionary period of the early 1980s, the Motor Carrier Act of 1980 and the administrative excesses of the Interstate Commerce Commission. If Congress forgoes this unneeded and unwanted legislation, perhaps the industry will be truly diverse, truly competitive and truly able to provide the shipping public with the best transportation services possible.

STATEMENT OF EDWARD J. KILEY ON BEHALF OF BULK CARRIER CONFERENCE, INC.

My name is Edward J. Kiley and I am counsel to the Bulk Carrier Conference, Inc. (BCC) which maintains its offices at 249 South Van Dorn Street, Alexandria. Virginia. I am a partner in the law firm of Grove, Jaskiewicz, Gilliam and Cobert. As counsel to BCC I am responsible for the execution of policy as established by the Board of Directors and the complete execution of the Conference by-laws. I have been authorized by the Board of Directors of the Bulk Carrier Conference, Inc., to present testimony regarding S. 1711.

HISTORY AND COMPOSITION OF BULK CARRIER CONFERENCE, INC.

The Bulk Carrier Conference is the major tank truck carrier collective ratemaking and tariff publishing bureau in the United States. The Conference is presently comprised of more than 50 member motor common carriers of property specializing in the transportation of various commodities moving in bulk form, in tank or other type of bulk trailer equipment.

The Conference was formed in 1957 and conducts its regulated collective ratemaking function in accordance with an agreement filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 10706. The Conference's revised agreement, filed in compliance with the cited statutory provision, was submitted to the Commission in May of 1981 but has not as yet been the subject of a decision of the ICC.

Even prior to July of 1984 (when the prohibition applicable to collective ratemaking for single line rates and charges became effective) the Conference's collective ratemaking activity has been confined to the submission of general increase proposals, adjustments to joint line tariff provisions, the restructuring of existing tariffs and the formulation and publication of uniform accessorial rules applicable to the transportation of commodities in bulk. As the Committee is aware, all single line rates are now proposed, processed and published as independent actions taken by individual members of the Conference.

In addition to this "collective ratemaking" function, the Conference does engage in the publication of individual tariffs of Conference members as well as non-members. The Conference also collects, collates, and analyzes "cost of service" data based upon submissions by individual members of the Conference.

PURPOSE OF TESTIMONY

My purpose in testifying with regard to S. 1711 is to convey to the Committee the position of the Conference, as formulated by its Board of Directors, on certain aspects of the cited legislative proposal as it applies to and would have an effect upon the bulk carrier industry. The specific provisions which I will address and which the Conference is opposed to are those which would eliminate antitrust immunity for the collective ratemaking function not permitted by 49 U.S.C. § 10706 and the elimination of entry and tariff publication requirements for bulk carriers. The reason for such opposition is the potentially devastating adverse effects such will have upon the safety of operations of such carriers and upon their financial stability.

The members of the Bulk Carrier Conference are engaged, for much of their operations, in the transportation on the public highways of flammable and explosive products, poisons, acids and hazardous commodities of all types. For example, many of the Conference members transport propane, in pressure tank trailers, 8,000 to 10,000 gallons at a time. Others transport such lethal and dangerous commodities as liquefied natural gas, and anhydrous ammonia, likewise transported under extreme pressure and in quantities per trailer significantly greater in explosive capability than the largest device now currently available to conventional armed forces. Extraordinarily flammable commodities are also regularly transported over the public highways by such carriers, not the greatest of which is high test gasoline and jet fuel. Commodities such as benzene, routinely transported by Conference members, is even more flammable as well as carcinogenic, and capable of posing a far graver threat then the equivalent amount of gasoline.

In addition to these explosive and highly flammable products, members of the Conference as a regular part of their business transport such alarmingly toxic and corrosive substances as hydrochloric acid, muriatic acid, ketone, mercury based pesticides, naphtha acid, phenol solutions and methyl isocyanate (the cause of the Bhopal disaster), to name but a few.

Millions of gallons of these commodities are, each year, transported by members of the Bulk Carrier Conference, Inc., and similarly situated carriers over interstate highways, federal aid highways, state highways, rural roads, city streets and circumferential highways used by millions of citizens in private automobiles concurrently with trucks transporting these hazardous materials.

I trust that this brief description has caught the attention of the Committee members as it serves as the primary basis for the Conference's opposition to the proposed legislation. Certainly, the transportation of such commodities cannot be banned, as each of these items described and each of the thousands of other dangerous commodities transported by tank truck carriers are not only important to the economy, but are critically essential to life as we know it in the United States.

Would this Committee undertake legislative action which would compromise the safe transportation of such commodities? Would the Committee fail to take legislative action which would even marginally improve the level of safety by which such transportation is conducted? The Bulk Carrier Conference thinks the answer to both questions is no.

Unfortunately, the Department of Transportation, the author of S. 1711, appears willing to do precisely what this Committee would refuse to do and for the sake of a catch phrase-deregulation of the motor carrier industry. By DOT's own statistics, maintained by its Bureau of Motor Carrier Safety, truck accidents are increasing, and in fact increased 18% over the past year. The New York Times for October 3, 1985, quoting from an EPA report, stated that nearly 25% of all toxic chemical accidents over the past five years occurred during transportation. Airline travel, by contrast, is the safest form of transportation in the world, but on September 19 at a press conference the Secretary of the Department of Transportation advised that 500 new FAA inspectors were to be put on the job specifically for the purpose of performing certification and aircraft inspection. All of this effort was for a relative handful of service providers, and in response to a series of airline accidents occurring over recent months. By contrast, there are only 80 BMCS inspectors for the over 25,000 regulated for-hire motor carriers and more than that number of private carriers operating in the United States. It would appear that DOT's responses and commitment to safety are saved for circumstances when citizens are killed in wholesale lots.

The critical question, then, is how would passage of S. 1711 have an adverse effect on the safety of operations of bulk motor carriers? The answer is self-evident to anyone who understands the current system of checks on safe operations by motor carriers. For example, presently, the Interstate Commerce Commission issues operating authorities to motor carriers seeking to perform for-hire interstate services. while I would readily admit that it is easy, under 49 U.S.C. § 10922, to obtain such an operating license, the Commission will not issue such operating license until a new carrier has proven that it has obtained the minimum necessary liability insurance coverage. Presently, such minimum limit for the types of commodities just described in $5 million. The Interstate Commerce Commission has a procedure in place for revoking a carrier's operating license in the event such insurance lapses, is canceled, or falls below the minimum level. Similarly, there are in place procedures whereby a carrier with an "unsatisfactory" safety rating from DOT's Bureau of Motor Carrier Safety cannot obtain operating authority from the ICC. By eliminating the Commission's jurisdiction over all motor carriers of property, these in-place procedures disappear as well. S. 1711 makes no provision whatever for any sort of similar system assuring that only adequately insured motor carriers and those which can operate safely perform bulk transportation services on a for-hire basis in interstate commerce.

I am speaking in connection with the transportation of hazardous commodities, and more specifically the transportation of such commodities in the quantities generally transported by bulk carriers. The Committee cannot, and should not as the Interstate Commerce Commission and the Department of Transportation generally do, lump this element of the industry in with the rest for purposes of considering deregulation issues. Recently a United States Court of Appeals had to instruct the Interstate Commerce Commission for the third time that the routine issuance to carriers of operating authorities permitting the transportation of bulk commodities without specific proof being presented as to that carrier's fitness to receive such authority was in direct contravention of that court's earlier rulings and outside the scope of the Motor Carrier Act of 1980. *American Trucking Associations, Inc. v. I.C.C.* — F.2d — (5th Cir. 1985).

It can hardly be said that the Department of Transportation is presently set up to take over such supervisory regulatory role to the Interstate Commerce Commission nor can it be said that S. 1711 provides DOT with the necessary mandate or funding to do so. Given the staff at the Bureau of Motor Carrier Safety of the Federal Highway Administration, DOT could not even begin to establish a similar procedures to that which are in place already at the Interstate Commerce Commission and merely for the purpose of assuring, at least the minimum insurance coverage is obtained by carriers before they engage in for-hire transportation service and such carriers have satisfactory safety ratings.

The relation between safety of operations for bulk motor carriers transporting dangerous articles and rates, and in particular collective ratemaking, is less direct, but more important to the issue of safe operations of carriers engaged in such activities. As the Committee will be well aware, rates are a reflection of costs. Collectively established rates are a reflection of collectively compiled, analyzed, and computed costs. There are certain special costs associated with the performance of bulk transportation service, particularly the transporation of hazardous materials. First, we can look at the cost of insurance. Federal law mandates minimum requirements for such insurance and the highest minimum, $5 million, applies to the transportation of such hazardous commodities in bulk. Members of this Committee are more than well aware of what has occurred to liability insurance coverage for and environmental restoration for such carriers. Carriers which routinely maintained insurance at levels three, four and five times what the required minimum have found that in 1985 a third or a fourth as much insurance, the minimum $5 million coverage, is costing three, four and five times what the higher limits of liability cost no more than a year ago. One graphic example should suffice with regard to this unique cost feature. A carrier which previously maintained liability insurance, including environmental restoration coverage, at a level of $16 million in 1984 and paid approximately $35,000 in premiums for such insurance, recently found itself having no more than $5.5 million in coverage and paying $700,000 for the privilege. Let us examine the cost of equipment. A stainless steel tractor-trailer unit which, in its various configurations, makes up the vast majority of the fleets of bulk carriers presently costs approximately $100,000, depending upon particular fittings, accessories, etc. Most bulk carriers have replaced little if any of this equipment during the past five years because of the impact of the 1980 Motor Carrier Act and the economic recession. In the very near future, there will have to be massive equipment replacement costs borne by those carriers choosing to remain in this element of the industry. Bulk carriers' terminal facilities must be equipped with hazardous waste treatment and disposal equipment as required by the federal Environmental Protection Agency as well as state EPAs and at a cost which continues to escalate year by year. The carrier equipment itself is fitted with varying accessorial devices such as pumps, special hoses, filters, vapor capture devices, etc., depending upon the commodity transported by such trailer. Some trailers must be fitted with rubber linings or constructed of special alloys to transport certain highly corrosive commodities. Recently the Hazardous Materials Transportation Board of the Department of Transportation released a proposed rulemaking in Docket No. HM-183, 183A calling for new specifications for tank trailers to comply with heightened safety requirements, which included proposals to require the retrofitting of existing trailers to comply with the new standards. Other costs to consider is the fact that virtually all bulk transportation services are one-way in nature, mandating that the rate cover not only the cost of transporting the loaded trailer but also the return of that trailer for cleaning prior to reloading.

Collective ratemaking, performed under the present limited antitrust immunity, assures carrier members of the Conference of a forum whereby such costs can be discussed, analyzed, and worked into a form of compensation based upon industry average costs. This is not to say that carriers do not take independent action so as to account for specific cost items applicable perhaps only to a particular market or a particular carrier. However, the basic costs are contained in the collective process of cost assembly and analysis. This helps carriers better realize their costs of operations in this market of transporting dangerous commodities and better enables rates to reflect these true costs.

In general, an organization gathering and distributing statistical data pertaining to things such as sales, current and past prices and cost factors is not considered to be a per se violation of the antitrust laws. *Maple Flooring Manufacturers Association* v. *United States,* 268 U.S. 563 (1925). However, the exchange of information which pertains to price or has a direct bearing upon price (i.e., cost data) can, in some circumstances, be considered an antitrust violation. American Column & Lumber Co., 257 U.S. 377 (1921). Basically, if a plaintiff can show that the data collection and dissemination was designed to or had the effect of restricting price fluctuations, then a violation of Section 1 of the Sherman Act (15 U.S.C. § 1) can be established.

Particular doubt on this issue has been raised because of the Supreme Court's decision in *United States* v. *Container Corporation of America,* 393 U.S. 333 (1969), where it was held that the exchange of price information in the context of the industry was a violation of Section 1 of the Sherman Act even though there was no evidence of an agreement to adhere to a price schedule. See, also, *United States* v. *United States Gypsum Co.,* 438 U.S. 421 (1978); *Sugar Institute* v. *United States,* 297 U.S. 553 (1936).

While in general the exchange of historical price information and cost data directly impacting on price may not be an antitrust violation, there is an area of uncertainty that leaves many commercial entities unwilling to get involved in any such program. Consequently, without statutory antitrust immunity it can be expected that many carriers, particularly the larger ones, and shippers enagaging in private carrier activities, will refuse to participate in any program of cost information collection or even to report current or past rates. This will make it impossible for accurate comprehensive data to be obtained. A valuable management tool to many bulk carriers will be lost and all BCC members, but particularly the smaller ones, will be hampered in correctly judging their costs and efficiency.

The reluctance of carriers to submit past or current rate information, absent statutory antitrust immunity, could have a particularly adverse effect on competition within the bulk commodity hauling industry. With passage of the DOT legislation, it would be competition-promoting service if the BCC were to take publicly announced rates from numerous bulk carriers and disseminate this information to the shipping public. Shippers could then turn to one source and determine which carriers were offering the lowest cost service for particular commodities between particular points. Without that information, shippers would be in a difficult position to determine which carriers my be offering the most attractive rates. The lack of such a service by the BCC would be particularly harmful to smaller carriers who do not maintain extensive sales staffs and would be restricted in their ability to disseminate rate information. Therefore, to the extent that the BCC could collect and disseminate current and past rate information, it assists in promoting more vigorous competition among carriers. However, for the reasons indicated, there will be a real reluctance among many carriers to provide such information on the assumption that the antitrust standards are not clear and they will wish to avoid any possibility of antitrust entanglement.

This analysis, of course, begs the question of why carriers cannot individually assess such costs, charge rates to meet such costs and earn a reasonable profit, or if they cannot, to retire from the business. One answer is that not all elements of the industry are sufficiently large or sufficiently sophisticated to perform such costing service on their own, or if they are capable, occupy such extensive periods of time in doing so that they are faced with one of two choices. Either they can wait to handle a piece of business until they have fully analyzed the cost of providing the service by which time usually another carrier has taken the business away, or they can accept the business, perform the transportation service and only later find out that for each dollar in revenue obtained through a charge rate it has cost $1.25 to perform the service.

Many will no doubt ask whether this is not the way it should work. Perhaps the carrier just noted in the example should find that his costs exceed revenue and retire from the industry or, at least, from that market. What may occur, and what in many cases does occur, however, is that in order to compensate for imperfect costing the carrier is tempted to reduce costs elsewhere such as in the area of maintenance, equipment replacement or some other move which compromises the carrier's ability to perform in a safe fashion.

Perhaps what it comes down to is whether this Committee is willing to allow the marketplace to assure safe operations of carriers performing transportation service of such remarkably dangerous commodities. The marketplace approach is plainly that of DOT and the ICC, as S. 1711 makes no provision whatever for entry or compensation controls for these carriers.

The Bulk Carrier Conference to the extent it provides a collective ratemaking forum for carriers and shippers of bulk commodities, and controls in general has a positive effect on this entire circumstance. The Conference provides for an exchange of cost data among members so as to better allow them to price their own services reflective of such costs. The Bulk Carrier Conference is now, for example, developing a computerized costing model by which all costs associated with particular transportation services can be provided by any subsecriber to the program. Individual carriers may submit their own cost data for a personalized costing model, but the industry model depends upon the free exchange and submission of cost data possible only where antitrust immunity is available. The Conference also provides a forum for the establishment of rules of operation, particularly concerning the provision of accessorial services and accessorial equipment and uniform charges therefore, and in an area such as this where costs are virtually indistinguishable carrier to carrier. Such is also available only where antitrust immunity as it exists today is available.

It is a simple fact of economics that a carrier, particularly a carrier of such dangerous articles as are the members of the Bulk Carrier Conference, remains a safe carries when it obtains from its service adequate revenues to support the expenditure of funds for maintenance, for equipment replacement, for driver education and training, and for all of the other features of a carrier's operation which deal directly with safety. The Motor Carrier Act of 1980 commands the Interstate Commerce Commission to regulate such industry with a view towards assuring an adequate return and the financial stability of that industry. I am not here to say that the Commission has performed under this mandate perfectly since 1980. They have not. The Commission has, as its Chairman has testified before this Committee, done all that is administratively possible to "deregulate" all forms of the motor carrier industry. The Commission has essentially taken the view that if a carrier wishes to price its service at below its costs, that is the carrier's own business and that if the carrier goes out of business because of such practice, then that is the marketplace at work in its most efficient fashion. True enough, but when such a view is applied to carriers such as those who are members of the Conference the government is allowing the marketplace to assure that only safe operating carriers of dangerous articles are plying the highways. It is my position and the position of the Conference that such is a disservice to the very fundamental responsibility of government, to assure the public safety.

There are other reasons, and many of them, why antitrust immunity should continue to be extended to motor carriers of property even were S. 1711 to pass. For example, the Bulk Carrier Conference, like most collective ratemaking organizations, collectively establishes rules of application. The establishment of certain uniform rules or guidelines for the handling and interchange of transportation equipment transporting bulk commodities can also facilitate competition by providing uniform handling methods. In this way, equipment can be dealt with in a standard manner without personnel being concerned about individual carriers handling equipment in disparate ways. This is particularly advantageous for the handling of dangerous commodities such as those that are flammable or combustible. Uniform standards for handling such commodities would greatly reduce the danger of accidents.

In general, the collective establishment of uniform standards for handlinng particular equipment may not be considered a violation of the antitrust laws. *Eliason Corp.* v. *National Sanitation,* 614 F.2d 126 (6th Cir.) *cert. denied* 449 U.S. 826 (1980). However, as with the exchange of price and cost information, efforts at standardization of methods of handling particular areas of commerce have resulted in antitrust difficulties. *Radiant Burners* v. *Peoples Gas Light & Coke Co.,* 364 U.S. 656 (1961); *George R. Whitten, Jr., Inc.* v. *Paddock Pool Builders, Inc.,* 424 F.2d 25 (1st Cir.) *Cert. denied* 400 U.S. 850 (1970). Such cases usually hinge on whether there was a rational basis for establishing the rules or guidelines in question and whether the standardization effort concerned an unreasonable restraint of trade. Hence, BCC efforts to establish standardized methods of handling bulk commodities, particularly hazardous ones, would be inhibited because of the chilling effect of possible adverse antitrust actions. Without a statutory antitrust exemptiopn, it would seem that beneficial results of uniform handling rules may be lost.

In addition, the Bulk Carrier Conference publishes tariffs for intrastate transportation for its member carriers in nine states. In all of these states, collective ratemaking is permitted and in many is even encouraged. Recently, the United States Supreme Court in *Southern Motor Carriers Rate Conference, Inc.* v. *U.S.,* 105 U.S. 1721 (1985), has determined that the states are the proper tibunals to determine to what extent collective ratemaking or an intrastate basis is to be permitted, and not the federal government. However, without federal antitrust immunity, and based upon the past performance and position of the Department of Justice and the Federal Trade Commission, efforts will once again be made to term legitimate intrastate collective rate-making activities as violations of the federal statute. Carriers which compete on an interstate basis, but which also compete on an intrastate basis, will hardly feel comfortable assembling for a meeting to discuss intrastate rates knowing that if the Department of Justice can determine an effect upon interstate commerce, a criminal indictment is possibly the outcome.

The Bulk Carrier Conference, Inc., frankly does not care whether the described kinds of necessary control, and permitted collective ratemaking activity, is supervised by the Interstate Commerce Commission or by the Department of Transportation, whether under a Motor Carrier Administration or under the present structure. It is the position of the Conference that such controls are essential to the public safety and that collective ratemaking activities as described are an integral element of a carrier's ability to perform transportation of dangerous commodities in a safe fashion. It is also the position of the Conference that the Department of Transportation, either as presently constituted or as would be constituted if S. 1711 is enacted, is not in a position to perform this service. With a mere 80 federal inspectors and no mechanism in place to assure the population the bulk carriers of dangerous commodities operating on the highways are doing so in a safe fashion, DOT will have to be substantially and significantly revamped if it is to play that role.

As noted in the beginning of my statement, the Conference has upward of 50 members at present. Not all for-hire carriers of bulk commodities belong to the Conference and the obvious question is that if the Conference and regulation are so important, why are not all bulk carriers members? The anwser to such question is not an easy one. Virtually all carriers of bulk commodities routinely obtain copies of all bulk Carrier Conference tariffs, including supplements, reissues and independent action items and employ such documents in pricing their own services. Consequently, some of the benefits of collective ratemaking inure to even non-member carriers. Secondly, some carriers have viewed non-membership in the Conference as a marketing tool and because of the hostility with which some particularly large shippers view collective ratemaking. Others do not join or withdraw from membership because they believe that antitrust immunity is shortly to be abolished and are simply placing themselves in the "free market" earlier than is required.

The Conference believes firmly that if this Committee rejects this ill-advised legislative proposal as reflected in S. 1711 the membership in the Conference will grow. In fact, the Conference believes that when its costing model is available the membership will increase for that reason alone. Moreover, the Conference is currently contemplating the establishment of a new class of member so as to include major manufacturers and distributors of these hazardous commodities who operate their own private carrier fleets and for the purpose of obtaining from them cost data for the described model and sharing with them the benefits of such costing program. Any such modification in the structure of the Conference would, of course, require either ICC approval or the approval of whatever agency might administer such collective ratemaking agreements in the event some form of legislation is passed removing such jurisdiction from the ICC.

In conclusion, I must say to the Committee that the element of motor carrier industry comprising carriers specializing in the transportation of such hazardous and dangerous articles in bulk is unique. Perhaps this uniqueness is found in the extent of damage by explosion, fire or contamination which can be done by a single unit of a single carrier engaged in such transportation activities. Perhaps it is unique because of the specialized nature of the transportation. Whatever the reason, its uniqueness pertains directly to serious and critical safety considerations. This Committee, and indeed the federal government as a whole, has on obligation under our form of government to take whatever steps are necessary to assure that only safe carriers perform service, that only safe equipment is operated on the highways, and that to the extent the transportation of these dangerous articles is necessary, and we will know how necessary it is, that such service is performed only by carriers whose safety of operation is known and assured. The marketplace cannot perform this service. The Department of Transportation cannot peform this service as it would be constituted if S. 1711 was enacted. There must be a system of entry controls for bulk carriers, there must be a system of instantaneously determining that bulk carriers are adequately insured. There must also be a system of maintenance supervision to assure safety, and a system of driver training relating to handling such dangerous commodities. Finally, there must be a method by which bulk carriers can adequately assess and appreciate their costs of operation as an element of a particular industry segment, and assess charges for such service which adequately compensates for such costs,. It is the judgment of the conference that this method is best achieved as it has been achieved in the past—a system of responsible control coupled with the availability of collective ratemaking with antitrust immunity.

The Conference position, as expressed in this statement, is that Congress would do a disservice to the public by enacting S. 1711, or similar legislation, thereby leaving to the "marketplace" the primary responsibility for controlling the transportation of hazardous commodities. Would Congress contemplate removing regulations pertaining to the construction, location and operation of nuclear energy generating plants? A ridiculous proposition, is it not? Would states allow such plants to price their service at a level where a reasonable return was not achieved? An equally improbable scenario, is it not? Such an industry is both essential and potentially catastrophic. The bulk motor carrier industry is no less essential and, considering the volume of dangerous articles transported, no less a potential danger to the public. It

should be subject to the same sort of controls as the power generating industry—those controls suitable to a public utility.

STATEMENT OF CHARLES A. VAN ZOEREN, PRESIDENT OF ALVAN MOTOR FREIGHT, INC.

My name is Charles A. Van Zoeren. I am the President of Alvan Motor Freight, Inc., 3600 Alvan Road, Kalamazoo, Michigan 49001. My family has been involved in this company for over 40 years. I have personally been active in the trucking business for almost 30 years.

Alvan Motor Freight is a motor common carrier of general commodities operating extensively throughout the state of Michigan and several counties in northern Indiana. Eighty percent of our business comes from Michigan intrastate shipments. The remaining 20 percent is from shipments moving between points in interstate commerce which either originate or terminate in Michigan. Most of these latter shipments move in joint line service over through routes and on joint through rates. In 1984 Alvan Motor Freight's total system operating revenue was $18 million.

In 1984 we transported approximately 180,000 shipments. Ninety percent of those shipments are in the less-than-truckload category. Our system average weight of less-than-truckload shipments is about 1,000 pounds and our average length of haul is only 150 miles. We are truly a short haul distribution type carrier. We operate 160 tractors, 420 trailers and we have seven terminals which provide our platform handling or dock operations. We employ 240 people.

Alvan Motor Freight is a member of eight motor carrier rate bureaus, viz., Central States Motor Freight Bureau, Inc.; The Eastern Central Motor Carriers Association, Inc.; Central and Southern Motor Rate Tariff Association, Inc.; Rocky Mountain Motor Tariff Bureau, Inc.; Middlewest Motor Freight Bureau, Inc.; Niagara Frontier Tariff Bureau, Inc.; Michigan Intrastate Motor Tariff Bureau, Inc.; and the National Motor Freight Classification.

The purpose of this statement is to express and to explain my strong opposition to any legislation which would further deregulate the trucking industry. I am gravely concerned about the provision in the proposed DOT bill which calls for DOT to make a two-year study of the burdens supposedly imposed by state regulation of trucking. I view any such study as nothing more than a thinly veiled prelude to the elimination of intrastate economic regulation by each of the individual states. Fundamentally, each state has the right to control local matters. In Michigan the state legislature recently reviewed the process but decided to retain regulation of rates and entry for motor carriers through its Public Service Commission. This time-honored method has proven to be in the public interest, benefitting both the shipping public and the carriers.

For example, in the rate area, *all* shippers of Michigan intrastate commerce can benefit from discounts, up to 15 percent, whenever the carrier is able to realize a cost based savings, e.g., multiple tender of 2 or more shipments at one time, aggregate tender of some minimum number of pounds at one time, palletizing or shrink wrapping of shipments, etc.

On the other hand, on interstate shipment, the Interstate Commerce Commission permits unlimited discounts which do not have to apply to all shippers, but whose application may be limited to the chosen few, usually the larger shippers. The ICC does not require or even suggest that discounts reflect cost savings.

In Michigan, fair and even-handed economic regulation by the MPSC has well served the interests of *both* shippers and carriers. Smaller shippers do not become the victims of rate discrimination on Michigan intrastate shipments. The same cannot be said for the shippers of the smaller shipments which are transported in interstate commerce. Simply stated, insofar as interstate shipments are concerned, the smaller shippers are paying rates in order to subsidize the heavily discounted larger shippers.

A substantial part of the lower peninsula of the state of Michigan is sparsely populated. The philosophy of Alvan Motor Freight has always been that the basic concept of sound economic regulation, including the common carrier obligation to serve at reasonable rates, is justified and especially important in an area like northern Michigan. Thus, we feel that the current level of state economic regulation in Michigan is entirely appropriate, and it should not be preempted or interfered with by the federal government.

Alvan Motor Freight serves nearly 5,000 customers in the state of Michigan and northern Indiana. I doubt if more than a few hundred are members of the big shipper associations that are pushing so hard for total deregulation. The needs of the thousands of smaller shippers in Michigan for next day service at reasonable rates are the same as the needs of the larger shippers. The only problem is that, without effective regulation by the state or federal regulatory agencies, only the larger shippers benefit. In Michigan, the level of rates approved by the PSC is cost based, relatively uniform and reasonably stable. Compared to the chaotic interstate situation, there is much less of a need for general rate increases to be sought.

The proposed DOT bill would eliminate any further federal regulation of interstate rates. If that were to happen, the current transportation cancers, i.e., below cost rates and discriminatory rates, would spread like wildfire to the detriment of small shippers and all LTL carriers. The Congress should not subject this nation's once great for-hire LTL transportation system and its thousands of relatively small customers to such dire business consequences, in order to satisfy the desires of a group of large shippers and some government economists who have never operated a truck line.

One of the major reasons why DOT and DOJ want deregulation is to eliminate rate bureaus, the vehicle used by virtually all of the LTL general freight carriers—large and small—throughout the United States to collectively determine reasonable rate levels based on regional costs. It is not unusual for Alvan Motor Freight to pick up several shipments at one time from the same shipper. For example, one of our pickup trucks operating in the outlying territory could pick up 20 less-than-truckload shipments at one stop ranging from 50 pounds to several thousand pounds. Ten of these shipments could be destined to points in the state of Michigan, and the others destined to distant points like Denver, Memphis, Chicago, Boston, and Kansas City. The rates to these points are published by six different rate bureaus. There is no way that a company of our size could economically and efficiently construct cost based rates to these distant points when our physical operations extend not far beyond the southern border of Michigan. Instead, Alvan can interline the shipments to points in Colorado, Illinois, Massachusetts, Missouri and Tennessee with any number of connecting carriers with whom we maintain through routes and joint through rates.

The through rates assessed for these joint line shipments are based on the costs of operations unique to the particular ratemaking territory. They are efficiently and economically determined, in the sunshine, through the collective ratemaking procedures authorized by statute and approved by the ICC. Most of the connecting carriers also have single line authority covering the same shipments. Therefore, if the antitrust immunity were to be eliminated, Alvan Motor Freight would no longer be willing to maintain through routes and joint rates and risk civil and criminal antitrust problems. Instead, we would charge the customer a higher, local rate to the point of interchange. This would prove to be even more costly to the customer who would then be required to route and make arrangements for all transportation beyond the interchange point.

For all of the foregoing reasons, I urge your subcommittee not to recommend or approve any legislation which would further deregulate the trucking industry.

STATEMENT OF McGAW LABORATORIES

My name is Richard E. Quag. I am President of National Traffic Consultants, Inc. This statement is submitted on behalf of McGaw Laboratories, Inc. of Irvine, California. McGaw has been my client for 12 years and this statement reflects its specific views on the proposed Trucking Deregulation Act of 1985.

McGaw Laboratories is a producer of certain supplies used by hospitals, including intravenous solutions and administration sets, and also various food supplements. It employs approximately 3000 people and has a sales volume of two hundred and fifty million dollars annually ($250,000,000). It has production centers located in Milledgeville, Georgia and Sabana Grande, Puerto Rico as well as Irvine, California. McGaw initially ships its products in truckload lots from these three centers to 45 warehouses located nationwide. These shipments move by contract carriers, but with freight charges based on the applicable provisions of the National Motor Freight Classification. From the warehouses, these products are then shipped, upon demand, via motor common carriers to hospitals and pharmaceutical suppliers. These secondary shipments average approximately 1,000 pounds each and account for roughly 70% of McGaw's total annual freight bill of twelve million dollars ($12,000,000). In all, approximately 98% of this company's shipments move via motor common or contract carrier.

In getting its products to market, McGaw is heavily dependent on regulated motor common carriers. It feels strongly that the demise of the existing regulations under the proposed Trucking Deregulation Act of 1985 would produce very harmful results for the users of motor common carrier services. For example, the quality of service, which has deteriorated since 1980, would further deteriorate. Prior to 1980, McGaw was able to obtain "next-day" service for movements from the warehouses to many off-line destination points. Now, the best it can expect is "next week" service, and in many instances even that is not available. Further, the availability of the protective services required by a number of McGaw's products is likely to be diminished should regulation be abolished. For example, in order to avoid damage while in transit, some of McGaw's products must be maintained at temperatures above 32 degrees Fahrenheit. It has been my experience that a decreasing number of common carriers now provide this service and, in the absence of regulation, it is likely to be even less available and more expensive.

Should the proposed trucking deregulation legislation become effective, the users of regulated motor common carrier services would also be disadvantaged by the elimination of the Carmack Amendment. With few exceptions, the Carmack Amendment makes common carriers strictly liable for loss of or damage to shipments they are transporting. In contrast, in a completely deregulated environment, the burden of proving these claims would be shifted to the shipper.

Additionally, the existing laws have authorized the Commission to establish regulations governing claims for overcharges, as well as for loss or damage. Without these provisions there would be no uniform regulations or standards governing the handling of claims and carriers would be able to impose onerous conditions such as unduly short periods for the filing of claims. Under these circumstances, McGaw would be far more likely to absorb the expense resulting from the loss of or damage to its shipments. The claims experienced by this company average in the two hundred ($200.00) to three hundred ($300.00) dollar range. If McGaw were obliged to bear the burden of proving these claims, carriers would be less likely to settle. They would be well aware that it is simply not cost effective for the shipper to litigate claims of this size where uniform federal procedures governing claims have been eliminated and where the repeal of the Carmack Amendment leaves them with a substantially diminished change of success which is dependent upon widely verying state laws.

Since the Motor Carrier Act of 1980 became effective, McGaw has benefited from the rate flexibility authorized by this legislation and it has taken advantage of numerous discounts which the carriers have offered. At this point, however, rate flexibility is optimal and further elimination of rate regulation would be harmful and counter-productive. As previously indicated, the majority of McGaw's shipments are small—averaging approximately 1,000 pounds. Further, they are tendered at irregular intervals in response to demands from hospitals and hospital suppliers which are often in relatively remote locations. The small size, irregular movement and remote destinations of these shipments tend to make them less desirable as compared to those tendered by companies whose shipments may be larger, more frequent, and which move with more regularity to less remote destinations. Clearly, if the existing common carrier obligation, to provide service to all shippers at reasonable rates, were removed and the ICC was no longer charged with insuring that motor common carrier rates are not excessive, McGaw could well become the victim of discrimination, as would many other shippers—particularly small to mid-sized shippers.

To compound this problem, with the elimination of filed tariffs, McGaw would be deprived of the only reliable means of determining the lowest available rate for its shipments. An important benefit of the present system of filed rates is that it enables both shippers and carriers to have knowledge of the existing rates applicable on any commodity—including those which are established as the result of individual or collective action. Knowledge of the available rates enhances competition by identifying the existing rates against which an alternative may be evaluated. This knowledge of competitive offerings influences the reduction of rates to the minimum practicable level. Further, by inspecting published tariffs, shippers such as McGaw who may not have the benefit of special negotiated rates can, at least, determine whether the rate they are being assessed is higher than the prevailing industry level.

These are among the reasons why McGaw needs the existing regulations in order to get their products to market at a reasonable cost. It is, of course, difficult to speculate as to precisely what would be the overall economi impact on this company if rate regulation were to be entirely removed. However, after giving this matter some consideration, it is estimated that, in view of the nature of McGaw's shipments and the service it requires, under the proposed deregulation legislation its total freight bill of $12,000,000 would immediately increase by approximately 30 percent, or $3,600,000 per year.

For the foregoing reasons, McGaw Laboratories has concluded that further deregulation of motor common carriers would be harmful to its interests.

Thank you for considering our views concerning this crucially important legislation.

STATEMENT OF C.J. DWYER, CHASE BAG CO.

My name is C.J. Dwyer. I am the General Traffic Manager of Chase Bag Company. I have held this position for 25 years. My business address is 814 Commerce Drive, Oak Brook, Illinois 60521.

Chase Bag Company is a manufacturer of flexible shipping containers and packaging materials. Our products are made from paper, plastic and cloth. We have plant at Buffalo, NY, Newport News, VA, Reidville and Asheville, NC, Cleveland and Toledo, OH, Monticello, AR, Sibley, IA, Los Angeles and Hanford, CA, Portland, OR and St. Louis, MO. Our customers include other manufacturers who use our products as containers, and to otherwise pack and package their own commodities for shipping in interstate commerce. We sell approximately 150 to 200 million pounds of our materials annually.

The shippers' use of proper packaging materials and meeting appropriate packing specifications is a more important part of transportation than most people realize. Under the present system of regulation motor common carriers subject to the jurisdiction of the Interstate Commerce Commission are able to agree upon reasonable packaging requirements applicable to the thousands of commodities moving in commerce and tendered for transportation throughout the country. Such requirements are designed to prevent contamination, injury to other lading, and loss and damage to the product shipped by our customers. The present packaging requirements applicable to shipments tendered to motor common carriers are published on behalf of the carriers in the tariff filed with the Interstate Commerce Commission by the National Motor Freight Association, commonly referred to as the National Motor Freight Classification. These published tariff provisions govern and establish legal and other relationships between shippers, carriers and manufacturers, such as Chase Bag Company, and are necessary for the reasonable conduct of commerce.

From a manufacturer's point of view, if we are to meet the needs of our customers, the trucking industry must be able to continue collectively to agree among themselves on the packaging requirements necessary to move commodities safety and efficiently. A signficant portion of shipments move over the lines of more than one carrier so connecting lines clearly must agree upon the packaging requirements that will apply on joint line movements. Even where trafffic moves in single line service there must be agreement among competitors. Our customers cannot be expected to package its product one way when it hires one carrier and another way when it hire as competing carrier. Rather, efficiency and economy demand a unified and universally accepted system where trucking companies, based on their transportation experience, determine how and in what manner commodities are to be packaged before thay are tendered for transportation.

The ability of carrierss to agree upon common packaging requirements also directly affects loss and damage claims. Under present regulation, federal law provides that a common carrier is liable for loss and damage to cargo except in certain well known instances such as an Act of God. If we as a manufacturer produce, and if our customers use our packaging materials that meet the requirements published in the carrier's own tariff on file with the Interstate Commerce Commission, a carrier cannot evade damage claims by attempting to blame the loss on faulty packaging material. Without continued regulation, our ability and the shippers' ability to enforce loss and damage claims against carriers will be lost and there will be years of litigation. Each state court will be able to impose its own views on the law applicable to carrier liability for loss and damage. Thus, what may be considered to be reasonable and safe packaging in Texas may be different than what is found to be reasonable and safe in California. This situation would make it impossible for manufacturers and shippers to protect themselves against loss and damage to traffic moving in interstate commerce.

The Subcommittee should also keep in mind that the carriers' packaging requirements are subject to regulatory supervision. If, for example, the carriers propose to impose a new packaging requirement which we as manufacturers or our customers believe to be unreasonable or discriminatory, we now have a forum relief. The carriers' changes are filed in a tariff submitted to the Interstate Commerce Commission and we have a remedy before that Commission against unreasonable practices.

Of equal importance is the fact that we as a manufacturer have an opportunity to have input into the process of formulating the requirements before they reach the Commission in the tariff form. Under the classification agreement of the carriers, interested persons are given the right to be heard before any tariff changes are made by the carriers. We also have the right to propose changes in the packaging requirements to the carriers. This forum for discussing, fact finding and agreement enables shippers and carriers to work together to come up with needed changes. The legislation now before this Subcommittee would demolish this valuable process that promotes commerce.

Chase Bag Company believes that the Subcommittee may be unaware of the role regulation has played in providing for reasonable packaging requirements necessary for safe and efficient transportation. It enables manufacturers to produce materials that meet the specifications of the trucking companies so that our customers in turn, can purchase products that measure up to the standards required by the trucking companies. It also insulates shippers and manufacturers from litigation where carriers seek to escape liability for loss and damage based on claims of defective packaging. Without regulation, these positive benefits that flow from having accepted and binding packaging requirments will be destroyed to the detriment of commerce in the United States.

For these reasons, Chase Bag Company urges that the Subcommittee abandon legislation that eliminates regulation of motor carriers operating in interstate or foreign commerce.

QUESTIONS OF SENATOR PACKWOOD AND THE ANSWERS

Question. In your testimony you emphasize the importance of the current system for developing packaging requirements for the various commodities shipped in interstate commerce. To what extent is antitrust immunity needed for these activities? In your view, is there any way these activities could continue absent immunity from the antitrust laws?

Answer. The Packaging Industry consisting of flexible and non-flexible containers i.e. paper, plastic, textile bags, fiberboard cartons, fiberboard drums, wooden boxes, metal drums, etc. has, for the past 50 years or more, been free to discuss with carrier representatives, Uniform Freight Classification Committee, National Motor Freight Classification Committee, the practical construction and application of various forms and types of outside shipping containers that, in the opinion of the container manufacturer and the carriers' representatives, will best move a great variety of commodities in interstate transportation in a safe and practical manner. This ability and privilege to discuss such packaging construction has been of immeasurable benefit to the manufacturer and shipper of the commodity(s) and the carrier(s). These benefits allow the shipper of any commodity to move his commodity(s) to market and have assurance that his commodity(s) will be available at destination in the same condition as at time of manufacture because of a sound and practical container. These benefits protect the carrier(s) in that the sound and practical shipping container help to protect the carrier(s) from potential loss or damage in transit. These benefits provide a large measure of protection in that the carriers' personnel are provided with a practical means of protection when handling commodities in interstate transportation. In summary, these benefits have an economic advantage in that interstate commerce is accomplished with minimum financial delay to manufacturers and carriers, since there is little or no waste of time in the reassembling or the remanufacturing of damaged goods. The safe protection of commodities in transit enhances the manufacturers cash flow in that his market is more readily serviced. In other words, sound and practical packaging has a domino effect with the manufacturer of the commodity, the carrier(s) and the ultimate consumer. To maintain the continued marketability of commodities the packaging industry must have a legal forum such as the Classification Committees in order to ensure the above benefits are both continued and maintained.

Without antitrust immunity it would be impossible for the packaging industry to determine the safe and practical capabilities of shipping containers without the direct assistance and help of transportation experts such as the carriers' Classification Committees.

Question. You express concerns about loss and damage claims. Would you be at all supportive of further economic deregulation of the trucking industry if the current loss and damage standards were retained?

Answer. The present Motor Carrier Deregulation Act of 1980 has, in my opinion, provided ample economic deregulation of the trucking industry. Consequently, further deregulation should be delayed or postponed until the motor carrier industry and the shipping public has been fully able to digest the present deregulations. During this period of assimilation of deregulation, the Carmack Amendment should be fully maintained, as its elimination would only compound the time factors and confusion that will ensue as present deregulations are being digested. I feel that further deregulation in conjunction with the elimination of the Carmack Amendment would, at this time, be of specific economic harm to all those engaged in interstate commerce.

Question. You urge in your testimony that the Subcommittee abandon legislation that eliminates regulation of motor carriers operating in interstate or foreign commerce. Are *all* of the current economic regulations, such as those governing entry and ratemaking, really needed?

Answer. The economic regulations that have become part and thoroughly integrated in American industry have produced and at the same time maintained a clear example of democracy in action, in that the regulations provide a clear basis of legal and economic equality. Present regulations allow *any* manufacturer and *any* carrier legal and economic redress when confronted with economic injustice and for all the years of their existance, present regulations have provided just that, economic justice. The failure occurred with the appointed officials entrusted with the application of the regulations. Present and future deregulations have produced and will enlarge the economic power of a few individual companies, which will be of specific economic detriment to American industry and the shipping public, as well as carriers. An example of the failure of appointed officials is the ridiculous actions of the I.C.C. in their time-consuming handling of entry and the backlash from this ineptness is a contributing factor to deregulation. The I.C.C. could have provided economic guidelines and criteria for the purpose of insuring stability and integrity for the carrier industry and the shipping public.

The fundamental aspects of ratemaking that have been destroyed by deregulation allow the shipping public and the carriers to legally discuss pricing that would insure consistent, excellent service and at the same time financial stability. Financial stability in conjunction with excellent service was an integral factor in interstate commerce regardless of the size of the manufacturer and/or the carrier.

Former regulations that were ineptly applied by bungling appointed officials were in most every case able to produce a sound and economically reasonable means of transporting interstate commerce on a daily basis. Refinemants were in order, as with most everything in life.

Statement of Keith Vaskelionis, Sr.

My name is Keith Vaskelionis, Sr. I am President, Treasurer, Chief Operating and Executive Officer of Blue Line Express Inc., 260 D. W. Highway South, Nashua, New Hampshire 03060. I have been associated with this company for 35 years and have served it in a variety of capacities, including garage helper, dispatcher, rate and billing clerk, payroll clerk, bookkeeper, salesman, traffic manager, sales manager, operations manager and Executive Vice President.

Blue Line was founded in 1930 with the investment of $20.00 in a Model T pickup truck by Dana L. Clark, who is still active in the company's affairs. The Company is a small regional motor carrier serving all of the New England States, plus New Jersey, New York and Pennsylvania. It maintains terminals in Nashua, NH, Weehawken, NJ (NYC area), Boston, MA, and Albany, NY. It is a carrier of general freight, which includes among some of the products, raw materials and finished products for the textile industry, shoe and paper plants, retail store merchandise, foodstuffs, chemicals, school supplies, high technology and computer industry, plastics industry, consumer products and petroleum.

Blue Line owns all of its own equipment and employs all of its own drivers and mechanics. It employs no owner operators. It currently operates 82 tractors and 305 trailers. The attached schematic map outlines its territorial service area. The configuration of its freight includes 65% of its total revenue derived from LTL freight of all kinds; the remainder being TL traffic. Our traffic flow is typical of the hundreds of small general freight carriers operating in New England Territory. Basically, consumer goods flow inbound in LTL shipments to the northern New England region and truckload shipments move outbound.

I am opposed to DOT's proposal to completely deregulate the trucking industry. Our industry generally and the New England territory in particular already suffers from severe excess trucking capacity resulting primarily from the ICC's failure to properly administer the entry provisions of the Motor Carrier Act of 1980. In 1980 Blue Line's annual gross revenue ran about $12 million. In 1984 it was about $7 million, or a total loss of market share of in excess of 40%. In addition to this loss of over 40% of our business since 1980 over 100 employees of Blue Line have lost their jobs. These losses are due primarily to (i) an influx into our area of a large number of new trucking companies that skim-off the truckload and large LTL traffic leaving us to handle the expensive small shipment traffic, and (ii) the below cost pricing of these new carriers as well as by some of the large existing carriers to attract the traffic of large shippers. Open entry coupled with a lack of rate controls under complete deregulation would worsen this already unhealthy situation because more and more carriers would be competing for the same amount of traffic. It has been my experience that the large shippers always have been able to use their leverage to obtain favorable rate treatment. In a regulated environment however, large shippers seldom were able to force the rates down to a below cost basis. In a nonregulated environment where over capacity abounds the large shippers are able to obtain highly preferential, including below cost, treatment from many large carriers while the little shipper still pays the full price. In effect, increasingly since 1980 the small shippers are subsidizing the motor carrier transportation bills of the large shippers. Because of the excess capacity already being experienced, my company is operating increasing amounts of empty or lightly loaded equipment and our productivity continues to decline. Complete deregulation would simply compound these problems. There is no sentiment in my territory for complete deregulation. I am personally aware of over 1,000 small and large shipper accounts that my company works for, and I have not had one tell me or any of my representatives that they are looking for more de-regulation. They are saying to me, enough, is enough, we will have no industry left if further deregulation takes place.

As I understand it, the DOT bill contains no standards concerning the safety and fitness of trucking companies entering the business. The liberal entry policy of the current ICC and lack of enforcement by the Commission has already resulted in numerous new carriers operating in New England on a short run, unsafe basis. State officials tell me that they are extremely concerned about the unsafe operations of many of these new comers on our highways. Under the DOT bill there is nothing to assure minimum insurance coverage before a trucker starts hauling freight. Today, the situation can be policed somewhat because unsafe trucking operations or a failure to carry minimum insurance coverage can result in denial or revocation of ICC operating authority. Without any operating authority license to deny, revoke or suspend the government as a practical matter will be unable to enforce safety compliance.

The DOT bill would abolish the requirement for rate publication and the maintenance of a public tariff file. This is an anticompetitive proposal. Rate and tariff publication gives shippers and carriers knowledge of competitive prices and permits them to react to competition. We maintain a close watch on the rates published by our competitors. Absent tariff publication we will be operating in the dark and unable to react in a timely manner to the price charged by our competition.

I am particularly concerned with the DOT's proposal to eliminate antitrust immunity for collective ratemaking. My company is an active member of The New England Motor Rate Bureau, a collective ratemaking organization headquartered in Boston, MA, and operating under an ICC approved ratemaking agreement. The New England Bureau has about 800 member carriers of which about 750 are small regional truckers. The Bureau's area of service to its members is not limited simply to publishing rates collectively or individually made, but it includes a unique system of Classification, having only (5) five classes of freight and reflecting principally each class on a basis of cubic density. This classification, with its simplicity, has brought the praise of the shipping public, industry, and even the ICC, and continues to. The basic class rate structure in New England has been devised obviously to accommodate the Classification in that it provides for cubic density and loadability of product. It reflects the cost of doing business within the territory. It also is devised to have rate scales based on an average of (5) five mile blocks which reflects the peculiarity of how freight moves within the territory. The area's traffic is extremely short haul typifying heavily concentrated small industries, and some large, close to their sources of supply and market place, such as to Nashua, 35 miles, Nashua to NYC, 235 miles, Worcester to Boston, 42 miles, Exeter, NH to Portland, ME, 67 miles, etc. As stated, the large portion of the Bureau's membership comprises hundreds and hundreds of small regional carriers which, with but few exceptions, are smaller than my company. However, irrespective of each carrier's individual size, all have representation in the activities of the Bureau, and all have been involved in the establishment of a unique system of rates which reflect their cost of operation. In view of the huge number of commodities, the varied transportation characteristics, origin and destination pairs, weight categories and other factors, collective ratemaking is indispensable to the establishment and maintenance of rational and reasonable rate structures. Because, most all of, or at least a major percentage of, the member carriers are small and limited in their resources, they rely on their active participation in the Bureau and on the Bureau staff for gathering information regarding the cost of doing business on a territorial basis and for any particular movement of freight. Through this broad participation, rates which meet New England needs are formulated. This typifies my company's experience and this system has served us all very well. The loss of the availability of such a system of cost and ratemaking would literally destroy all of the small carriers.[1] This destruction makes no sense whatever when consideration is given to the fact that under the current system which accommodates collective ratemaking there is an unqualified right by individual carriers to price independently, combined with the regulatory authority of the ICC to disapprove the resulting rates thereby insuring that the public interest is fully protected. Competition from private carriers and other transportation agencies operating outside the collective ratemaking process further insures that the rates charged the public are not excessive.

Blue Line interlines a significant amount of traffic with other carriers. Present antitrust immunity makes such joint line arrangements feasible. If the DOT bill is passed, antitrust vulnerability would, as a practical matter, seriously limit the use of such arrangements. Let me give you an example of the impact. We have several customers that manufacture products in remote locations in Maine and New Hampshire and these industries rely on us to deliver their goods, sometimes same day, and certainly overnight to their market places within the New England Territory. Because these shippers also have numerous market places outside the New England Territory, it is necessary for us to maintain joint-line rates with a great many of the large carriers that serve points outside of our territory. These large carriers invariably hold nationwide authority and compete with us in some traffic lanes. However, for all practical purposes, most of these large carriers have not served these remote customers locally and perhaps never will want to. Collective ratemaking among these large long haul carriers and the regional carriers like Blue Line provide a complete system of rates for joint line transportation. In the absence of antitrust immunity it would be necessary for each carrier to negotiate joint rates with each other carrier on a head to head basis. Even then, the carriers invariably engage in competitive operations in some traffic lanes. Given the risks under the antitrust laws of making rate agreements between competitors, I would not expose my company by negotiating joint rates and through routes with competitors. As I see it, carriers such as Blue Line would likely substitute a more costly single line service even when efficiency would otherwise dictate the use of joint line service. However, where joint line service would be maintained, it would, more often than not, involve a combination of the separate rates of the participating carriers which would prove to be higher than single factor joint through rates under the present system.

The DOT bill repeals the authority of the ICC to require carriers to supply quarterly and annual financial reports. In the absence of such information it will be impossible to develop industrywide and regional cost analyses which are absolutely necessary to the establishment of reasonable rate structures. The costing of truck transportation is unusually complicated. The present financial reporting system provides the very practical basis for developing reliable cost information. Moreover, the current report system provides financial and statistical information to a wide variety of interested persons, such as carriers, shippers, labor unions, insurance companies, and government agencies. Once this reporting system is scrapped, the cost to the Government of obtaining reliable information in the future will be prohibitive.

In view of the above, we urge that the Trucking Deregulation Act of 1985 not be adopted. I appreciate the opportunity given to me to make my position known. If I can be of assistance to the subcommittee on making its decision, I will be happy to help.

STATEMENT OF EUGENE R. MAY, PRESIDENT, ARIZONA EXPRESS, INC.

Members of the Committee and Staff: My name is Eugene R. May. I am the President of Arizona Express, Inc., located at 4002 North 31st Avenue, Phoenix, Arizona. My personal experience in the transportation industry encompasses some twenty-eight years. For the past three years, I've been at Arizona Express. Prior to that, I held a number of management positions for a major California based common carrier, including four years as Regional Vice President of Operations.

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[1] We are a Teamster organized carrier. Therefore, we can not graciously close our door and leave the trucking business because the withdrawal liability under the multi-employer pension plan exceeds our net worth.

Arizona Express currently employs one hundred people. We presently operate within the state of Arizona under an Operating Certificate from the Interstate Commerce Commission (MC–144256–Sub. No. 3). We were recently granted additional authority (in Sub-No. 4 proceeding) to serve California and Nevada and we are preparing to begin that service in the next few weeks. In 1984, our gross revenues were approximately four million, two hundred thousand dollars ($4,200,000).

We have seven terminals, located in Phoenix, Tucson, Nogales, Prescott, Flagstaff, Sedona and Yuma. Much of our business consists of serving either as the originating or as the delivering carrier on interstate joint-line shipments, with larger, longhaul carriers. We also handle intrastate shipments moving exclusively in Arizona. Our present mix is approximately forty-five percent interstate and fifty-five percent intrastate.

The typical interstate shipment, on which we would serve as delivering carrier, is an LTL shipment from anywhere in the U.S. destined to one of the numerous small towns in Arizona. Over 75% of our shipments last year weighed less than 1,000 pounds. The shipment would be picked up at the terminal of a longhaul carrier or delivered to our terminal in Phoenix by a longhaul carrier. At out Phoenix terminal, incoming shipments are sorted according to their ultimate destination and placed into another truck for delivery. Our outlying terminals operate what is called a "peddle service" within the industry. In other words, these trucks move from the terminals into the smaller towns in the countryside. At each town, they deliver freight destined to the town or make pickups of outgoing freight, returning to these terminals or our Phoenix terminal at the end of the run.

Some 90% of our interline freight is received from, or delivered to, connecting carriers at Phoenix. At Phoenix, we regularly interline traffic with over thirty carriers. As a practical matter, however, we are linked into a nationwide network of joint rates and service with approximately 900 carriers participating in tariffs issued by Rocky Mountain Bureau. This makes it possible for our shippers and receivers to tender or receive freight which moves via two or more carriers between all points in the nation.

It is my understanding that the present hearing is to receive testimony on the pros and cons of the Administration's Bill which would virtually end all regulation of trucking. For the reasons that follow, I think that the elimination of economic regulation would be a mistake.

First, this entire matter was carefully considered by Congress just five years ago, and after weighing competing interests, the Motor Carrier Act of 1980 was adopted. That Act reduced entry barriers, permitted more pricing options, and generally reduced the role government was to play in overseeing our transportation system—yet, it recognized the need for a system.

Although the speed with which this hearing was set has given me only a short time to review the specifics of the Administration's proposed legislation, I believe there are a number of problems which should be addressed.

I think it is a mistake to totally eliminate the present requirement that persons entering the trucking business file for operating authority from the Interstate Commerce Commission. While I realize that the I.C.C. has been fairly liberal in granting such authority, such a registration system is still worthwhile if it helps weed out those who are not fit (because of equipment, insurance, or other reasons) to perform the service for which they seek authority. This is particularly important in the area of safety.

As you are probably aware, the state of Arizona does not have any provisions for seeking operating authority. While they do have minimum insurance requirements and safety (maintenance) standards, in my opinion, the elimination of requirements that persons wishing to enter the business seek appropriate operating authority from a government agency known to regulate the business has resulted in a serious safety problem in Arizona. So serious, in fact, that the Arizona Department of Transportation recently held hearings to determine what steps can be taken to reduce or eliminate the drastic increase in highway accidents involving motor carriers which has occurred in the past few years under deregulation. I am convinced that this problem was severely exacerbated when Arizona eliminated the requirement that persons wanting to enter the trucking business had to apply for operating authority.

Another aspect of the Bill which makes little sense to me is the proposal to eliminate any filing requirements for tariffs. As the Subcommittee is aware, filed tariffs represent the legal rate which applies on movements of traffic, and therefore, creates important rights for both shippers and carriers, because the filed tariff contains the terms and conditions (including price) under which the shipment will move. This is particularly important in the trucking business, where literally thousands of shipments move each day. It would create immense problems if every shipment was subject to varying interpretations as to what terms and conditions applied.

Once again, deregulation in Arizona provides a comparison. Carriers still have tariffs, but they are no longer filed with the Arizona Public Service Commission. Under this system, I have found shippers much more likely to dispute what rate applied, in effect, changing the contract after the freight has moved. It is of little solace to say that I can seek legal recourse to recover, especially when the burden of proof is much, much greater than under the filed tariff concept.

Interrelated to the importance of tariff filings is the Administration's attempt to totally eliminate antitrust immunity for collective ratemaking. As the Subcommittee is aware, prior to the Motor Carrier Act of 1980, the carriers, in meetings not open to the general public (including shippers), set the price for traffic moving under bureau tariffs. Unless a carrier took independent action, no other price could apply. The Motor Carrier Act of 1980 has changed that dramatically.

The various restrictions placed on collective action by the Motor Carrier Act of 1980 have created a situation where "bureau rates" have essentially become a benchmark or price list from which carriers and shippers deal. Thus, rate competition, including a multitude of price/service options, is rampant. At the same time, however, the importance of the rate matrix (i.e., bureau rate structure) should not be overlooked. The existence of a national classification (which assigns commodities with similar freight characteristics to similar classes), coupled with the bureau rate matrices, makes it possible for any shipper to determine a base rate for a 750 pound shipment of computer paper, for example, from San Jose, California, to Tucson, Arizona, or between any other pair of points in the country. This system makes it possible to accomplish a rapid comparison of carrier rate options, because everyone is working with the same base matrix. The "in vogue" discounting in today's marketplace is greatly facilitated by this structure.

Aside from the 1980 Act permitting such rate structures to remain in place (and be changed on an overall or major basis), the other aspect of collective ratemaking which remains is the general increase. This exemption, which is still subject to ICC review, has merely permitted the motor carriers to make an attempt at keeping their rates in line with the pace of inflation. Congress has seen fit to make it even easier for the railroads to achieve the same result through automatic determination and application by the Interstate Commerce Commission of the Railroad Cost Recovery Percentage.

With regard to the rate matrix previously mentioned, its importance to joint-line traffic (a major portion of Arizona Express' business) cannot be overemphasized. Many of the longhaul carriers from which we receive freight at Phoenix also have authority to provide single-line service to some or all of the small towns in our service area. But, by utilizing the joint-line service offered by our company, participating carriers are able to consolidate onto one delivery truck interstate freight which has been brought to Phoenix by twenty or more connecting carriers. This freight is then moved to destination along with our local freight. Such a system achieves substantial economies because we are able to combine onto one vehicle freight which might otherwise move in several trucks to these outlying communities. Therefore, we are able to not only conserve fuel but to achieve load factors which would be impossible for carriers to attain on an individual or uncoordinated basis. If the traffic were divided among more carriers, it would be necessary for each carrier to hold shipments at a local terminal for some period of time until an adequate peddle load was obtained, or to engage in less economic and/or wasteful fuel practices. Under such arrangements, service to the outlying communities would be either more expensive or less frequent, and probably both.

Obviously, the nature of our business requires that we maintain joint-line rates with all the carriers with which we interline. I believe that the only practical way for us to do that is by participating in the collective tariffs issued by the motor carrier rate bureaus which cover the territories with which we are concerned. Hundreds of carriers participate in such tariffs. Our participation allows us to interline with all other participating carriers which serve Phoenix or our other terminals and to maintain joint-line rates with all of them. Without the rate bureau system, it would be much more difficult for us to have interline arrangements with nearly as many longhaul carriers. Without the rate bureau systems, we would either have to publish our own individual tariff or concur in the individual tariff of each carrier with which me might interline.

It would be virtually impossible for us to publish an individual tariff which would contain rates for service between all points in the United States and our direct points in Arizona, California and Nevada. Such a publication would have to contain both our local rates and joint-line rates for the thousands of potential origins and destinations outside our service area. It would also be unrealistic for us to try to pinpoint and publish joint-line rates for all probable shipping and receiving locations throughout the U.S., as well as for the thousands of commodities which move in and out of our service area.

Our only option would be to participate in the individual tariffs of each carrier with which we might interline. There are certainly hundreds of such carriers. To file, maintain and apply joint tariff provisions with all of those carriers would be a virtually impossible physical and economic burden. Moreover, the cost of publishing and maintaining the resulting hodge-podge of voluminous tariff matter would impose a far greater expense on the shipping public than the present collectively established rate system.

In short, I believe that the presently effective system of transportation in this country should continue, including regulation of entry, tariff filing requirements and use of collectively established base rate structure.

I thank the Subcommittee for the opportunity to present my views on the Administration's proposed legislation and ask that it carefully consider the question of why any additional changes are needed, in view of the present competitive system which has evolved under the Motor Carrier Act of 1980.

Statement of Louis P. Saia III

Thank you, Mr. Chairman, for allowing me to appear before this Committee and to make this statement.

My name is Louis P. Saia III. I am Vice President and Secretary of Saia Motor Freight Line, Inc., 104 Woodlawn Ranch Road, Houma, Louisiana 70363.

Saia Motor Freight Line, Inc. is a motor common carrier of general freight conducting operations under Interstate Commerce Commission MC Docket No 87511 to, from and between points in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee and Texas.

Saia serves a total of 1,150 points in the eleven named states. In the State of Louisiana it serves every point—some 374 in number. Saia has a total of 897 employees of which 576 are domiciled in Louisiana. In conducting its system operations Saia utilizes 414 power units and 886 semitrailers, a total of 1300 units.

In 1984 my company drove a total of 14,163,068 miles in intercity highway service. It transported a total of 637,383 shipments weighing a total of 676,381 tons. Although the average weight per shipment in 1984 was 2,122 pounds, 72.9 percent of the shipments handled weighed less than 1,000 pounds. Approximately 14 percent of the shipments transported by Saia were either received from a connecting motor carrier or delivered to a connecting motor carrier. The use of connecting motor carriers, more commonly referred to as interline service, is absolutely necessary in order for Saia Motor Freight Line, Inc. to provide its shippers with a total transportation service. At present, Saia has interchange agreements with more than 100 different carriers.

It is my company's firm belief that the continuation of collective ratemaking is essential to the continued performance of satisfactory service at reasonable rates. The proposed "Trucking Deregulation Act of 1985" would, among many things, eliminate that.

As I previously stated, Saia has interchange agreements with more than 100 motor common carriers. Through collective ratemaking, shipments moving in interline service do so at through routes and joint rates. Rates established through collective ratemaking procedures are subject to scrutiny by the shipping public throughout the docketing and public hearing process of the tariff bureaus. After publication in tariff form, the collectively made rates are subject to protest by all parties and to disapproval by the Interstate Commerce Commission. If this proposed Act is enacted into law, the antitrust immunity which makes feasible interline service at through routes and joint rates will be eliminated and Saia would become vulnerable to the operation of the antitrust laws by entering into any agreement for through service to or from a common point with more than one other carrier.

If this bill becomes law, I know that Saia Motor Freight Line, Inc. could not economically provide single line service in connection with every shipment tendered to it. Saia must utilize interline service. Quite frankly, entering into agreements with connecting carriers, while avoiding violation of the antitrust laws, would present many difficulties.

Saia would be very reluctant to enter a through rate agreement with another carrier unless Saia had knowledge of the financial condition of such carrier. Since the proposed bill would repeal the reporting requirements as to financial reports, Saia and, for that matter, any and all interested parties would be unable to have knowledge of the costs and financial condition of other carriers.

Saia, and I believe most carriers, would in all probability handle such shipments in single line service. The other alternative would involve the application of the separate rates of the carriers interchanging the shipments. A further fall out of the application of combinations of rates could well be the end of "collect" shipments which involve interlining. A "collect" shipment is one which moves from shipper to consignee with the freight charges paid by the consignee. Also. C.O.D. shipments involving interlining would, in every likelihood, be ended.

In my opinion, the practical effect would be greater costs to the shipping public. The greater costs could not be restricted to such particular shipments but would be spread across the entire rate structure.

Under the present law the basic rate structure of general commodity carriers are maintained in tariffs published by the respective rate bureaus. General increases in such rates required to offset increased costs are processed under collective ratemaking procedures. Knowledge of the effective rate levels is essential not only to motor carriers in order to remain competitive but also to shippers and government entities for the very same reason. Saia cannot remain competitive unless it has knowledge of the rates of other carriers operating in the same territories and vying for the same traffic.

It would appear to me, and shippers have repeatedly affirmed, that knowledge of the rates applicable for the account of competitors is necesssary to foster competition.

Elimination of collective ratemaking and abolition of the requirements of published tariffs and maintenance of a public tariff file would be against the best interests of Saia Motor Freight Line, Inc.

In 1984 Saia earned $11,225,139 from the transportation of shipments moving in Louisiana intrastate commerce. This amount represents slightly in excess of 20 percent of our total operating revenues. Section 61 could and very likely would result in the elimination of intrastate economic regulation. Not only would this be detrimental to Saia's best interests in providing intrastate service but, I believe, would constitute an infringement upon the basic rights of states to control their own affairs.

The present entry provisions by which new motor carriers commence operations has resulted in an over supply of motor carrier capacity. As in any endeavor, excess capacity produces a decline in productivity. The greater the excess the greater the decline. The greater the decline the greater increase in unit costs.

Those carriers entering the industry in the years since 1980 have for the most part avoided the costs of providing full motor common general commodity service. Their objective has been the transporting of truckload shipments. Many, if not the majority, of truckload shipments move in the direction of the light flow of traffic. The erosion of this traffic from the full-service motor carriers accentuates an already unbalanced traffic flow. The greater the imbalance of traffic the greater the cost burden placed on the head-haul traffic which is the less than truckload consumer traffic. This cost burden obviously has to be translated into higher rates for the shipping public.

I urge this Subcommittee to reject the proposed bill.

Mr. Chairman and members, I thank you for this privilege and your attention.

STATEMENT OF J. EDWARD DERRICK

My name is J. Edward Derrick. I am the Vice President of Marketing and Traffic of Berman's Motor Express, Inc., (hereinafter called "Berman's"), Post Office Box No. 1566, Binghamton, New York 13902. I have been employed by Berman's for the past 31 years having held positions in claims, operations, sales and traffic. I have held my present position for the past 15 years. I am authorized to make this statement on behalf of my employer.

Berman's is a common carrier of general commodities operating under ICC Certificate Number MC-11[illegible]625 and subs thereto, engaging in interstate and foreign commerce between the states of CT, MA, RI, ME, NH, VT, NY and PA, on the one hand, and, all points in the United States (except AK and HI), on the other hand. It also operates in intrastate commerce in the states of CT, MA, and NY.

Berman's maintains terminal locations at Medford (Boston), MA; Springfield, MA; Berlin, CT; Binghamton, Elmira, Syracuse and Rochester, NY; Allentown, Altoona and Pittsburgh, PA.

In the year 1984, Berman's had gross revenues of $8,396,000.00 with an operating ratio of 99.3 and a profit before taxes of a mere $57,000.00. It would ask that your subcommittees compare this business activity with its figure in 1978 (prior to the 1980 Motor Carrier Act) of gross revenues of $7,425,000, with an operating ratio of 95.4 and a profit before taxes of $339,000.00.

I was convinced that the Motor Carrier Act of 1980 was a vehicle that we could work under and adjust to, if it was implemented as written. Such was not the case, however. A more free entry allowed a flood of competition which literally removed us from the truckload segment of traffic due to our inability to compete because of labor cost differences. We are a union company and the competition is not. Time is needed to make these adjustments.

Aside from the competition of newcomers, we are faced with the growth of private carriage, shippers associations and the "innovative pricing" of the large conglomerate-owned carriers which have literally destroyed the rate structures. If the Interstate Commerce Commission was doing its job the past few years, and acted on the rates being filed, denouncing those that were unjust and unreasonable, our industry would not be in the shape it is today. Incidentally, the large carrier's market share has increased from 30% to nearly 60% since the Motor Carrier Act of 1980.

All of these moves to create new competition has had an affect on many small to medium-sized carriers' ability to maintain good productivty and service to the shipping public in their service area under the present economic conditions. Most carriers our size find their fleet aging to a near seven year average with power units over one million miles each! Good maintenance programs can last only so long. But with the return on equity being around five percent (5%), many carriers are not willing to invest and would consider selling out or merging with other carriers if it were not for the ERISA withdrawal liability rules that prohibit that thinking.

All these problems are now seriously compounded by the insurance companies deciding to increase our premiums from 75¢ per $100 of revenue to $2.40 per $100 of revenue. This represents an increase of 320%! This requires an additional $138,000.00 in annual revenue just to offset the insurance costs we have to meet with today's pricing as it is. This is also an impossible task.

With this background, your subcommittee is entertaining the idea of doing away with collective rate making—the ONLY bit of stability which is left for small carriers to be able to compete with the large conglomerate-type carrier and present the shippers with through rates and routes.

Approximately 40% of our shipment move in interline service. Some of these are with the larger carriers who do not want to service the very remote areas of our service territory.

If, down the line, you do not want to cause very deep social affects to the people living and attempting to do business in these rural areas, it would be best if you take stock in the affects of total deregulation to these people in their ability to live and conduct business in their small towns and villages. The pendulim has swung too far in the wrong direction if we expect to have sound, national transportation policy capable of being strong in the time of need.

We vigorously urge that the bill presented for total deregulation by the Department of Transportation be rejected. Secondly, we ask that action be taken by the ICC to face up to its responsibility to create a sound transportation policy by ending the discriminatory, below-cost pricing that it has allowed to continue, particularly in the past few years.

STATEMENT OF FORREST M. DURRETT, CHAIRMAN, BIRMINGHAM-NASHVILLE EXPRESS, INC.

Birmingham-Nashville Express, Inc. is a small Carrier providing service to many small communities less than 25,000 in population. We have a total revenue of approximately $7,500,000.00 and 70% is derived from regular route operation between Kentucky and Louisiana. The remaining 25% will be from truckload irregular route operation and 5% from Tennessee intrastate traffic. By and large, 75% of our shipments will be less than 1,000 lbs. and also about 30% will be interline traffic.

Without the antitrust immunity for collective ratemaking, interline traffic would not exist and, therefore, would deprive several of the small communities of the excellent service they receive. Because of this method, they have access to the entire United States by interline service. There is not enough traffic to these small communities to justify large carriers providing any degree of regular service. Secondly, without collective ratemaking, the small-to-medium size shippers would have no knowledge of the fair market price of transportation. Extremely large shippers would offer large carriers enough revenue by competitive bidding, and they would receive the fair market price. A Traffic Manager of a major corporation, with traffic experience in Europe and countries where they do not have any regulated carriers, told me recently he finds it extremely difficult to obtain information regarding the correct market price. Also, without regulation he does not know the financial strength of carriers or if they have the necessary insurance to protect his product while in their possession. Because of our regulations in the United States our shippers are most fortunate to know a certificated carrier is forced to carry insurance to protect his cargo, and liability insurance to protect the motoring public. Because of the requirement of the Interstate Commerce Commission on standardization of accounting and the filing of a Profit and Loss Statement, the public has information as to the financial strength of the carriers.

Since reregulation in 1980, approximately ⅓ of the carriers have been forced out of business because of bankruptcy or other financial instability. What we need is further regulation, not to protect the carriers necessarily, to protect a shipping and receiving public. As for our Company, a shipper allows us to serve them, we look on it as a sacred trust to protect their shipment, however, there are many unregulated, private carriers today who are transporting much traffic and not covered by insurance. I happen to know of a case where a trailerload was destroyed with a value of $35,000.00 and the carrier did not have insurance and was not in a financial position to protect the shipper. A trailerload of traffic depending on the commodity, could be valued very cheap or at many thousands of dollars. If a shipper lost the traffic because the carrier's equipment burned and was not adequately insured, it could place the shipper if financial jeopardy.

The state of Florida's smaller communities, where they have had deregulation on intrastate rates, in some instances, have experienced a 40% increase in freight rates. We would experience this small escalation of costs at the interstate level with additional deregulation, and smaller shippers in the medium and smaller communities would be the worst affected.

In summation, it is not necessary to have regulation to protect our Company to keep us in business but, in my opinion, it is extremely important to protect the shipping public from financial loss because of unstable motor carriers. We need more regulation to see that the small towns and small communities are afforded a high level motor carrier service where they can maintain their standard of life which would certainly be impaired without transportation. Assembly plants, wholesalers and retailers depend on transportation to receive their products for their individual needs. No product reaches its full value until it is transported to the point of need. The motoring public is due to have protection by an appropriate safety regulation by the Interstate Commerce Commission or Department of Transportation. We need regulations where the motor carriers are rquired to operate safely on the highways with limited hours of service and well-maintained vehicles that the driver may operate safely. It is may most fervent hope these bills will be defeated for the reasons stated above, and we will have substantial, appropriate legislation for further regulating motor carriers rather than deregulating them

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STATEMENT OF SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

My name is L. Vernon Farriba and I am the Executive Vice President of the Southern Motor Carriers Rate Conference, with officers at 1307 Peachtree Street, N.E., Atlanta, Georgia, 30309. I have functioned as its chief executive officer since August, 1976.

The Conference is a non-profit association of motor common carriers incorporated under the laws of Georgia. It was organized in 1935 and operates under approved Section 5a (Section 10706(b)) Application No. 46.

The primary purpose of the Conference is twofold:

1. To provide the means whereby its participating carriers may take joint action and independent action in establishing rates, rules and charges for their transportation services.

2. To compile, publish, distribute and file the tariffs containing the rates, rules and charges for the transportation services.

The activities, affairs and operations of the Conference are conducted under the control and direction of the membership through their representatives on the Board of Governors and the General Rate Committee. The General Rate Committee is charged with the affairs of the Conference concerning rates, rules, regulations, charges and related matters. The Board of Governors is charged with the responsibility for the affairs of the Conference other than those concerning rates, rules, regulations, charges and related matters.

The By-Laws of the Conference recognize two different types of carriers: member carriers and participating non-member carriers. Member carriers are those having physical operations in Southern territory which basically includes the States of Alabama, Florida, Georgia, Kentucky, Louisiana (East of the Mississippi River), Mississippi, North Carolina, South Carolina, Tennessee, the southern portion of Virginia and a part of West Virginia. Participating non-member carriers are those carriers that do not have physical operations in Southern Territory but participate in the rates in joint-line service only. There are approximately 335 member carriers and 379 non-member participants resulting in 714 total participating carriers.

The services offered by the Conference are important to carriers of all sizes. SMC member carriers range in size from the very small two and three truck operatiosn to the billion dollar carriers. For example, of the 335 members, 98 have revenues of less than $100,000 per year in SMC territory. Over half (172) have revenues of less than $500,000 per year.

The Conference publishes 70 tariffs and these tariffs contain approximately 29,358 pages of effective matter. The Conference issued 40,228 pages and distributed almost 48,118,737 copies of tariff and supplement pages in 1984.

There are approximately 3122 shippers (and shipper associations) and 462 carriers on the mailing list to receive SMC tariffs and supplements.

Any changes in rates, rules or regulations in the tariffs must be sent first to subscribers and then to the Interstate Commerce Commission at least 30 days prior to its effective date unless instructions are received to utilize outstanding short-notice special permissions authorized by the Commission. On major adjustments, the requirement is 45 days notice.

SMC publishes a Docket Bulletin each week describing in detail the proposed changes in rates, rules and charges through both the regular procedure and the notice independent announcement procedure. Included in this Bulletin are dispositions of regular procedure dockets, publications advice on all docket changes, except no-notice publications, i.e., where a docket is published and its effective date, a continuing status report of outstanding dockets and other related information. This Bulletin service is offered to both carriers and shippers for the cost of postage.

The SMC procedure specifically provides that "any carrier shall be accorded the free and unrestrained right to take independnet action either before, during or after any determination under the Rules of Procedure or By-Laws of the Conference."

Notice independent announcements are publicized in the SMC Docket Bulletin to provide the shipping public and competing carriers notification of the proposed change and to allow competing carriers to participate in the change if they wish. After a notice independent announcement is publicized in the Bulletin, it is then scheduled for publication in tariff form.

Regular procedure dockets may be proposed by any carrier or any shipper or receiver of freight or the authorized representative of any shipper or receiver of freight. Regular procedure dockets are publicized in the SMC Docket Bulletin. All proposals will be published without modification unless an objection thereto is received or a request for referral to the General Rate Committee for consideration is received from an interested party within ten (10) days from the date the Bulletin listing the proposal is issued.

Only in the instance where no objection is expressed either in writing or orally can a regular procedure proposal be "cleared for publication". All objected to regular proposals are referred directly to the carrier General Rate Committee for dispositon. Objections may be filed by any interested party including any shipper, receiver or carrier. In some instances, dockets are referred directly to the General Rate Committee for disposition by the proponent.

The shipping public plays an important role in the activities of the Conference. It is also a unique role in that a shipper may file proposals for rate changes the same as a carrier. A shipper may also object, request referral to the carrier General Rate Committee, request modification or request adoption of proposals which are before the General Rate Committee. This action can be by letter, phone or in person. A shipper may also appear before the carrier General Rate Committee to support, object to or request modification or disapproval of any docket before the committee. If none of these processes result in satisfaction to the shipper, he has the opportunity to file a formal protest with the Interstate Commerce Commission against the tariff publication prior to its effective date and a complaint after its effective date.

All of these courses of action are in addition to the direct contacts the shipper has with the carriers.

The procedures of the Conference have changed dramatically in the last several years as a result of the costing and reporting requirements of the ICC and the changes brought about by the Motor Carrier Act of 1980 and the ICC's implementation of the Act. There is also a greater awareness and sense of responsibility to the needs and demands of the shipping public. It is a continuing process to improve the operation of the Bureau not only for the motor carriers but also for the shipping public.

During the past several years, there have been substantial changes in the pattern of transportation services offered by motor carriers. The most dramatic of all those changes has been the growth in the importance of less-than-truckload service to the shippers.

There are at least two important reasons for this growth. Shippers and more importantly receivers of freight have been able to reduce or control their expense of investment in inventories and in the cost of housing and handling. Products change constantly and receivers cannot afford to build up inventories of merchandise that may change tomorrow.

Companies may have multiple plant facilities, many of which are located in small communities. New patterns of product distribution have resulted. The motor common carrier system has responded to these new challenges of shipper marketing techniques with reliable "just in time" service at reasonable charges.

The very nature of motor carrier service and its adaptability to the handling of LTL traffic in traffic lanes of varying sizes has virtually forced the railroads out of LTL traffic. The reliability of LTL motor carrier service has enabled businesses (both small and large) to schedule their operations with assurance that supplies will be delivered on time. The cost of this transportation is a part of the small manufacturers' cost of doing business. This cost is often very small in relation in the cost of maintaining large inventories which is the alternative to reliable LTL motor carrier service.

As can be seen, the LTL service and rates of the motor carriers are of substantial importance to the small business enterprise which competes in the available markets with larger enterprises. Shippers are very much aware of the fact that motor carrier service has increased competition between and among the business communities which utilize those services. As such, each shipper is anxious that none of his competitors be given an undue or an unjust transportation rate or service advantage. Shippers generally demand that the structure of motor carrier rates be consistent and stable. Thus shippers are vitally interested today in the easy and ready accessibility of information as well as the adaptability of information to the computer.

This LTL structure (both rates and service) would not have been possible without the process of joint consideration of rates available under the antitrust immunity. The joint consideration has encouraged a transportation system and network of motor carriers almost acting as one in transporting freight. Just on traffic within the South alone, there are more than 12,000 combinations of interchanges published between the carriers serving over 16,000 named points in the South. Between the South and the East, there are more than 12,000 published interchanges with the carriers serving over 20,000 named points in the East. Between the South and the Middlewest, there are over 13,000 published interchanges with the carriers serving over 7,000 named points in the Middlewest, and, between the South and the Southwest there are over 9,000 published interchanges with the carriers serving over 7,000 named points in the Southwest.

This total service by these carriers would not and could not have taken place without the joint ratemaking process. The frightening alternative to the present joint-route, through rate collective ratemaking process is millions of combinations of rates. i.e., each carrier charging his rate for his portion of the through movement. Continued antitrust immunity is an absolute must to allow the carriers to jointly agree on the establishment of through rates.

The importance of joint-line ratemaking to both carriers and shippers in SMC ratemaking territories, and in turn, the magnitude of the void which would be created by any stricture on joint-line ratemaking, can be demonstrated by a statistical comparison of shipment handling characteristics from the Continuous Traffic Study for the year 1984. Of 18,525,383 shipments handled by the full 49-carrier frame, 3,316,673 (17.9%) were handled on a joint-line basis. These joint-line shipments accounted for 12.9% of the shipment weight and 11.3% of the reporting carriers' revenue. The above statistics are based solely on traffic moving from, to, and between points in Southern territory on rates published by SMCRC and do not include intrastate traffic. From these figures, it should not be difficult to conclude that joint-line ratemaking is an integral part of collective ratemaking under the present Agreement No. 46, and its emasculation would have a substantial impact on the eventual cost to the general public.

The above is not to be interpreted that competition between the carriers does not exist. Competition does exist. For example, in 1984, SMC publicized approximately 813 regular procedure proposals and notice independent announcements and 5,000 no notice independent announcements. Of these, 98 percent of all requests received resulted in reduced charges.

Not only do the carriers compete through the bureau process, they also publish their own tariffs, participate in other more specialized bureaus, compete with private carriers, specialized carriers, freight forwarders, railroads, air lines and small packages service carriers. It is evident, therefore, that competition is a forceful element in the transportation industry.

However, unfortunately, many businesses dependent upon this system no longer know with the same degree of certainty that the cost of their transportation will remain consistent and nondiscriminatory. They can no longer easily determine their transportation cost in advance nor easily determine and compare the transportation cost of their competition. These problems are a direct result of the ICC's failure to enforce the Interstate Commerce Act as amended by the Motor Carrier Act of 1980. Prior to the Act, the Commission actively enforced the requirements of law that all rate practices must be just and reasonable and free from prejudice and undue discrimination. Tariff filing requirements and tariff circular rules were strictly enforced. Since these requirements of law are no longer being actively enforced, today's individual pricing practices often bear little relation to cost and are frought with actual and the potential for undue discrimination.

The Motor Carrier Act of 1980 did not change the standards set out in Sections 10701 and 10741 of the Interstate Commerce Act nor the Commission's obligation to enforce those standards. Yet in the name of competition, the Interstate Commerce Act is not being enforced today. In a world of overcapacity and shrinking traffic volume, many independent pricing actions are designed to allow the carriers to capture enough freight to maintain the cash flow necessary to stay afloat. Survival of the carrier is often preeminent and not the needs of the individual shipper. If the two happen to coincide on occasion it is by mere happenstance and not by design. Carriers should be permitted to establish a reasonable, nondiscriminatory rate structure—one which is aligned closely to costs and recognizes traffic consist as well as traffic volume. This coincides with the intent of the framers of the Interstate Commerce Act as amended by the Motor Carrier Act of 1980 and assures the shipping and receiving public of fair and nondiscriminatory treatment.

In order to better understand the rate bureaus current role in the motor carrier industry, the first thing needed is to make it clear as to what a rate bureau actually does. It is common knowledge that rate bureaus publish rates and tariffs, but that is only part of the story. The rate bureau's traditional role has been to assist the carriers in satisfying the statutory requirements of the Interstate Commerce Act with respect to ratemaking. The law still requires that carriers publish rates which are reasonable, whatever that means today, are not unjustly preferential or prejudicial and perhaps most importantly, that the rates are not unduly discriminatory. The primary tool in satisfying these statutory requirements is collective ratemaking.

Actually collective ratemaking is nothing more than forum in which interested parties can meet together to discuss and solve common problems. It has the somewhat unique ability to restore order to a frantic and unstable ratemaking environment. Perhaps most importantly, collective ratemaking eliminates the problem of discriminatory rates by ensuring that rates bear a reasonable relationship to each other. Our Supreme Court found many years ago that discriminatory rates form trade barriers, impede established industries, prevent the establishment of new industry and have a tendency to arrest economic development of regions. Those that prefer to stick their head in the sand and pretend that discrimination in pricing cannot take place in the competitive ratemaking environment are the ones that refuse to accept the lessons of history. However, if price discrimination cannot evolve in a competitive environment, then it appears that Congress certainly spent a great deal of wasted motion in enacting the Robinson-Patman Act which, of course, was created to prohibit price discrimination in other industries.

The ratemaking restraints imposed by the Motor Carrier Act of 1980 have acted in concert with the excess capacity in the industry produced by relaxed entry standards to produce a shift in the rate bureaus' current role in motor carrier pricing. Today, carriers are competing with each other more and more on a rate basis. Today, if carriers want the freight they have to provide good service at lower rates. Competition is keen and would not allow otherwise. Today, collective ratemaking insures a common base of rates from which all carriers can deviate as the market place dictates. The collective establishment of such rates allows the development of a common standard—something akin to a "suggested retail price" for a product which provides a point of reference from which individual vendors are free to deviate according to their individual needs and the dictates of the market place. This system saves both carriers and shippers substantial sums of money on information cost because both have a common and well understood base from which to negotiate without starting from scratch each time. Yet these pricing techniques must be confined within the parameters of the Interstate Commerce Act to insure equal and fair treatment for all who avail themselves of this country's motor common carrier transportation system.

Leasway Transportation can probably testify as to the importance of this idea to their ability to acquaint customers with their prices. Leaseway was never a bureau participant. They simply published their own rates in individual tariffs with the respective discount levels built into their rates. However, a lot of their customers complained because there were no easy way of comparing their rates with other carriers short of a rate-for-rate comparison. Today, Leaseway's undiscounted class rates are indentical to SMCRC's published rates, at least on South and East-South traffic. Shippers understandably prefer to start with a common base and simply compare discounts in order to determine the best deal and to insure that their competitors do not gain an unfair advantage.

It is increasingly obvious that the transportation market place today demands the swift, free flow of information necessary for both carriers and shippers to make pricing decisions. This is being accomplished through the rate bureau process through tariff simplification programs, computerization of tariffs, and the electronic exchange of information. Ratemaking has evolved to the point where conformity to the technical requirements of the computer is as important as the rate levels themselves.

What are the prospects for continued free flow of information and computerization in the absence of antitrust immunity, in the absence of publication of common tariffs through rate bureaus and in the absence of the tariff publication and filing requirements themselves? The proposed legislation would dramatically change the practice of giving notice to the public from that which has been in effect for well over 30 years. Advanced notice of changes by any information exchange would be prohibited and prohibitive as well as would be watching services on proposed changes. If the carriers are prohibited from disseminating information amongst themselves, it is not likely that they would go to the expense of providing it to shippers. Why should they advertise the price moves of a competing motor carrier? In the past, the bureau provided public dockets and notices of proposed changes, as well as the tariff containing them, to all carrier and shipper subscribers. Carriers might prefer to keep some shippers off balance if the instability of loss of immunity and no required tariff maintenance is thrust upon them. But, good businessmen that they are, each will keep their important customers posted on their prices.

Frankly, carriers would just as soon have their competitors and the shipping public remain in the dark about their own rates in an atomsphere of no immunity and no tariffs except where it's to their advantage. On the subject of information exchange, it should be abundantly clear that it will be the shipper who suffers the most. Rate bureaus now provide the proverbial "fish bowl" with which shippers can view all past, present and proposed rates swimming by at a computer-glance. With removal of antitrust immunity and tariff filing requirements, the fish will still be swimming rapidly with a few piranha in their midst, but the fish bowl will be covered.

What else does collective ratemaking through the rate bureau process accomplish? Rates bureaus provide research and analysis on costs and other business factors which are vital functions since most motor carriers are too small to have their own sophisticated capability. Rate bureaus provide a mechanism for quick adaptation to change in products or needed service. Rate bureaus bring order and stability to various factors involved in the business of establishing rates for motor carrier services. In short, rate bureaus cut the information costs to the industry, both to shippers and carriers.

In conclusion, SMCRC, on behalf of its member and participating carriers, vehemently opposes the various motor carrier deregulation proposals now pending before the Congress. The present pricing system that has evolved from the Motor Carrier Act of 1980 is working as the Congress envisioned. The only fine tuning necessary is to ensure proper ICC implementation of the statutory requirements of law. Certainly, the ICC has been derelict, at best, in fulfilling its statutory responsibilities. The Motor Carrier Act of 1980 sets out a framework where the ICC can and should promote healthy competition. But this goal can be accomplished while at the same time insuring that rates will be just and reasonable and nondiscriminatory. The two go hand-in-hand. The collective ratemaking process serves as the primary tool in satisfying these statutory requirements of law and for achieving these balanced goals. Collective ratemaking together with tariff filing requirements assures everyone of quick, inexpensive and equal access to information so vital to intelligent and nondiscriminatory pricing decisions upon which the free flow of commerce of this Nation so inextricably depends. We therefore urge the Congress to reject the various legislative proposals to deregulate the motor carrier industry and to require the Interstate Commerce Commission to implement the Interstate Commerce Act and the Motor Carrier Act of 1980 as the Congress intended.

STATEMENT OF KINZEY REEVES, RYDER/P-I-E NATIONWIDE, INC.

My name is Kinzey Reeves, President, Ryder/P-I-E Nationwide, Inc., Jacksonville, Florida and submit this written statement in opposition to Senate Bill S.1711 and respectfully request this committee to take no action to further deregulate the Trucking Industry at this time.

In support of the above position, may I provide the committee information about myself, my company and specific reasons for my opposition.

I have been in my present capacity with Ryder/P-I-E for the past year. Previously I was President of Ranger Nationwide, Inc. of Jacksonville, Florida, a sister company. Altogether, I have been in the transportation business with the above two companies for more than 23 years in various management positions.

Ryder/P-I-E operates as a motor common carrier in interstate, intrastate and foreign commerce in all 50 states, Puerto Rico, Canada and Venezuela. We may operate on an intrastate basis in Florida, California, Pennsylvania, Wisconsin, New York, New Jersey, Arkansas, Arizona and Oklahoma.

We operate from some 300 terminal facilities, employing over 11,000 people and utilizing approximately 20,000 pieces of equipment. Over 98% of our shipments are less-than-truckload (less than 10,000 lbs.). Our average shipment weighs about 800 pounds and the distance it is transported is over 1,200 miles. Our gross revenues were approximately $891,000,000 in 1984.

We pickup and deliver shipments at all principal points in the United States (over 100,000 population) every day. In addition we serve thousands of smaller outlying points on "local" or "peddle" runs with our trucks. However, we rely heavily on more than 600 connecting carriers at 150 interchange cities to serve additional thousands of cities, towns, villages and communities that are beyond the scope of our direct truck operations. We grossed more than 75 million dollars in revenue from interline shipments in 1984. Our customers depend heavily upon this portion of our service package.

Our company, and the trucking industry as a whole, has gone through tremendous upheaval since the Motor Carrier Act of 1980 (MCA80). Some of the problem was caused by the economic recession, but most problems were caused by additional competition created by the MCA80. The result has been excess capacity and prices that are unrelated to cost. Shippers, by switching their freight shipments from carrier to carrier, have forced not only competitors out of the market, but connecting carriers with whom we did business for decades. It is imperative that we do nothing more to further unsettle the market, but let the trucking industry complete its present adjustment—matching trucks with freight in an environment that is physically safe and economically sound.

ENTRY CONTROL SHOULD BE CONTINUED

We should continue the process of issuance of certificates and permits to allow operations over our nation's highways. A recent Department of Transportation report found that more than 3,000 truckers were unfit under present safety standards. I am convinced that our current application of the MCA80 entry provisions resulting in wholesale grants of permission to operate to "all" has caused our worsening truck safety record, a record that will become even worse should this bill become law.

COLLECTIVE RATE MAKING IS ESSENTIAL TO SURVIVAL OF OUR SYSTEM OF TRUCKING

It is essential to the recovery of the stunned trucking industry to continue the collective rate making process. Abolition or any significant reduction in antitrust immunity would be hurtful and not in the best interest of the public. There are several reasons why this is true.

a. The nation's system of rate bureaus where collective rate making is practiced openly under public and government scrutiny today provides reasonable rates to every community for every shipper.

b. Rate bureaus publish and file rates with the ICC and they are publicly available for all to see. This procedure insures that charges billed and paid by all trucking users are not only reasonable, but true and correct.

c. The rate bureau system provides rates between every single community in the nation and insures service to all.

d. Joint line rates are agreed to and published by the rate bureaus for Ryder/P-I-E and its more than 600 connecting motor carriers. It is only reasonable to conclude that all our connecting carriers require a common rate system with all of their connecting carriers, many of whom are competitors. As a matter of fact, some of our connecting carriers are also our competitors. Joint line and single rates cannot reasonably be separated. Shipments that are joint line for us are often single line for some of our connecting carriers and vice versa.

EACH STATE SHOULD CONTROL ITS OWN TRANSPORTATION DESTINY

Ryder/P-I-E operates in states whose transportation is totally deregulated, others lightly regulated and still others heavily regulated. I strongly believe the federal government should stay out of the transportation affairs of the states. I know for a fact that transportation needs and concerns vary by state. Each state knows its needs best. Let each state decide.

CONGRESS MUST CONSIDER SAFETY ON OUR HIGHWAYS

Earlier I spoke about the need for controls on who may operate on our highways and that a critical fitness test should be safety.

Just as alarming is the notion that prescription of hours of service by ICC/DOT be dropped. Studies have shown, that even with rules, many drivers remain on duty far too long, endangering their life, the lives of others and great amounts of property. Elimination of the hours of service provision is a step in the wrong direction. On the contrary, congress should urge through budget approvals or other means stricter enforcement of hours of service.

I AM OPPOSED TO THE CHANGES PROPOSED AT THIS TIME

I could address each of the other changes contemplated by this legislation, however, I expect the record to develop much evidence in opposition to each issue.

The bottom line is—make no change, let us run our business and give us the opportunity to return the Trucking Industry to a position of dependability and stability.

STATEMENT OF MICHAEL J. GORNO, HOLLAND MOTOR EXPRESS

My name is Michael J. Gorno. I am the President and Chief Executive Officer of Holland Motor Express, Inc., 750 East 40th Street, Holland, Michigan 49423. I have been president of Holland for the past four years, with the company for 19 years, and involved in transportation for the past 30 years. My previous assignments were Safety and Personnel Director, Vice President of Industrial Relations, and Executive Vice President.

Holland Motor Express, Inc. is a motor common carrier of general commodities operating under Certificate of Public Convenience and Necessity MC-59206, and Subs thereto, operating over regular routes providing service in the 8 midwestern states of Illinois, Indiana, Iowa, Kentucky, Missouri, Michigan, Ohio, and Wisconsin. Holland has 28 fully staffed terminals in these states. We serve in excess of 4800 points, operate some 1300 trailers and 700 tractors. This equipment needs to be replaced on a regular basis.

Holland employs about 1500 people, and serves more than 10,000 customers on a regular basis in the Midwest. We also have contract carrier authority. Our largest customer produces about 1 percent of our total revenue. Our total revenue in 1984 was over $91 million. We transported over a million shipments with an average weight of 1,043 pounds per shipment, an average revenue per less than truckload shipment of $76.03. Our average length haul is 239 miles.

Holland also operates between points in intrastate commerce in the states of Illinois, Indiana, Ohio, Wisconsin, and Michigan. Our intrastate revenue for the year

1985 should be approximately $8 million or about 13 percent of our total operating revenue. In 1984, 99.66 percent of all our shipments moved claim-free.

Holland Motor Express has been a member of several of the major motor carrier rate bureaus, including the Central States Motor Freight Bureau, Inc. in Chicago. I presently serve as Chairman of the Board of Trustees of that rate bureau.

During the past five years, i.e., since the enactment of the Motor Carrier Act of 1980, it is generally known that there has been very little new entry into the LTL general commodity motor freight business. The reason for this is the substantial investment required by carriers transporting LTL shipments. It is necessary to have an extensive fleet of city pickup and delivery equipment, many terminal operations, a network of communications equipment, computers for billing, accounting and tracing purposes, and sophisticated materials handling equipment for moving freight across the platform, etc.

By way of contrast, during the past five years there has been a substantial number of new entrants—tens of thousands—into the truckload sector of the business. At Holland we are becoming increasingly concerned about the safety, fitness and insurance coverage of these thousands of new entrants. We maintain extensive safety programs and full insurance coverage at great expense. We believe that any other common carrier, contract carrier or private carrier operating over our nation's highways should also be required to meet strict fitness standards, maintain comprehensive safety programs and full insurance coverage.

We are concerned that the Trucking Deregulation Act of 1985 or any other similar deregulation legislation will seriously jeopardize the fitness, safety, and insurance areas.

Insofar as rates are concerned, we submit that there is no valid reason for eliminating the economic regulation of the Interstate Commerce Commission. The requirement that carriers file tariffs with the Commission and the collective ratemaking ability to establish reasonable rate structures greatly assist the carrier and the shipping public in having available levels of reasonable rates covering all kinds of commodities, moving any distance no matter what the size of the shipment. For example, it is the collective ratemaking process that permits uniform freight classification in order to establish reasonable relationships between rates of shipments of iron and steel articles on the one hand, and rates on television sets on the other hand. The same collective ratemaking system provides the basis whereby the carriers can establish the appropriate basic cost differentials between different size shipments and a logical progressions of increases in rates as distance increases from 10 miles up to 3,000 miles.

The present system whereby all carriers have the free and unrestrained right to take independent action, permits Holland and all other carriers to use their knowledge of the particular costs to meet the specific price/service needs of any particular shipper. We do this all the time.

The collective ratemaking process is also important in that it establishes levels of rates for joint line service to points beyond which Holland Motor Express presently provides service. For example, approximately 12 percent of our revenue and 18 percent of our shipments move in joint line service. We participate through the collective ratemaking process in through routes and joint rates of collectively established rate scales to literally tens of thousands of points beyond our line. Without the antitrust immunity afforded collective ratemaking, Holland would be unwilling to risk potential antitrust problems by negotiating with other carriers any joint line rates between points where both carriers also happen to coincidentally have a single line service.

Holland Motor Express strongly opposes any attempt of the federal government to preempt intrastate economic regulation. We believe that each of the 50 states should have the authority to deal with the transportation problems within its borders. Over the years we have seen that the Public Utilities Commission in the State of Michigan, for example, has done an overall excellent job in providing fair, sound and impartial economic regulation of motor transportation between points in the State of Michigan.

Finally, we also believe that it is very important that the Interstate Commerce Commission continue to require adequate financial and operating data from the carriers in order that sufficient information is available to all interested parties—shippers, carriers and the ICC—to test the reasonableness of the rate structures.

For all the foregoing reasons, I respectfully request that your Subcommittee not recommend the Transportation Deregulation Act of 1985, or any similar type of legislation, to be passed by the Congress.

STATEMENT OF DONALD R. SOUZA

My name is Donald R. Souza. I am Vice President, Pricing and Market Development for TNT-Pilot Freight Carriers, Inc., 4103 North Cherry Street, Winston-Salem, North Carolina 27153-0000. I have served in this position for over eighteen months and prior to joining TNT-Pilot, I served with another major motor carrier for many years in positions in marketing, operations and pricing.

TNT-Pilot is a major inter-regional carrier, specializing in LTL general commodities transportation, with in excess of $185 million dollars in gross revenues in calendar year, 1984. We operate in twenty-one states, the District of Columbia and Quebec Province of Canada. We handle both short haul regional freight and longer haul inter-regional freight, servicing our customers from seventy-seven (77) terminal locations.

We oppose the further disruption of our industry which would result from the enactment of the "Trucking Deregulation Act of 1985". Our industry, especially the LTL general commodity carrier segment, has been put on the "ropes" in the past five years due primarily to the failure of the Interstate Commerce Commission to properly administer the Motor Carrier Act of 1980. As a result, what was a stable industry prior to 1980 has become a very unstable industry in 1985. Dozens of major LTL carriers have been forced out of business in recent years due to the severe price cutting being experienced, the excess capacity in the industry and the industry restructuring. Thousands and thousands of former trucking company workers have been placed out of work. Even at this moment, there are at least four major (top 20 in revenues for 1984) LTL carriers, who have implemented or are in the process of implementing wage reduction programs in the form of ESOP's and their futures are dismal. The consolidation trend that started in 1980, is rolling ahead, which can only result in more unemployment, the demise of many more trucking companies and eventually a few very large carriers dominating the industry and thus less competition. The Trucking Deregulation Act of 1985 will serve only to hasten this consolidation. Enforcement of the Motor Carrier Act of 1980, especially with regards to entry and economic regulation, could prevent the further demise of our industry.

In the write-ups we have reviewed on this proposed Act, we understand some of the key provisions are:

1. Elimination of antitrust immunity for collective ratemaking;
2. Elimination of all entry regulation;
3. Elimination of all rate regulation;
4. Elimination of tariff publication requirements. Our comments on each of these key provisions, follow:

1. COLLECTIVE RATEMAKING AND CLASSIFICATION

The process has been the principal fiber in keeping some consistency in today's list price system. Collective ratemaking and classification making has allowed the free flow of essential information needed to make informed decisions on general or broad rate or classification matters affecting our industry. Without this free flow of information such decisions would be made in vacuum with little information. With the immense number of commodities, freight characteristics, shippers, weight factors, origin and destination combinations and other factors involved in our pricing system, the group experience as provided by collective rate and classification making is imperative.

In the present non-disciplined pricing environment in which we operate, collective rate and classification making is a must. Competition from private carriers and others operating outside the collective process, along with the present right of individual carriers to price independently combined with the regulatory authority (if used) of the ICC to disapprove the resulting rates, insures the shipping public is protected.

2. ENTRY REGULATION

As indicated earlier in this statement, excess capacity is one of the major problems afflicting this industry. In fact, it may be the main problem, from which many of the other ills such as below cost pricing, have resulted.

Entry should be tightened instead of opened. Open entry will serve only to lessen traffic density and many entrants (as already being experienced), will be unfit to perform services from both a safety and financial standpoint. The current inaction of the ICC to enforce the present law, has contributed to increased insurance costs to the LTL general commodity carrier industry, where sound safety and loss prevention programs are in action. It has also resulted in the loss of truckload or large

LTL shipments which enabled our industry to better fill empty lanes or bypass breakbulks and thus reduce our operating costs.

We believe entry should be subject to both safety and financial fitness qualifications. These qualifications could be developed jointly between Congress, the DOT, the ICC *and* the ATA.

3. RATE REGULATION

It is no secret in the past five years that rates in the LTL trucking industry have increased excessively. This has resulted due to the lack of discipline in pricing that is rampant in our industry.

Excessive rate increase are implemented to offset non-cost based discounting. Discounts greater than 60% are being granted in the mad rush to get business. Discounts falling in the 25 to 40% range are now common. Unfortunately, while a few carriers attempt to cost justify their pricing, there are just too may major competitors who either do not know their costs or in desperation moves to generate cash flow, ignore costs, high-balling to their demise. And yes, there is some predatory pricing from the more financially strong carriers. But, how do you prove it.

The large shippers/receivers, realize what is happening. Many do not agree with what is happening, but they see little alternative but to take advantage of this pricing instability.

While the large shippers are receiving the large price cuts, the very small shippers are in many cases paying "full price", which is artificially high in order to help offset the below cost pricing being used on the large shippers.

Now to add to this cross—subsidization problem, we are seeing signs of an erosion of the profitable "full priced" shipments.

We do not need less or no rate regulation, the industry needs the ICC to actively enforce the Motor Carrier Act of 1980. The LTL general commodity carrier industry could be returned to a more stable environment, simply by the across-the-board cancellation of all discounts combined with a 10% reduction of LTL list prices (class rates). At this point, the carriers could than individually price, subject to the ICC enforcing the existing law and disallowing any price cut that did not meet certain profitability guidelines, established by the ICC and the motor carrier industry. This may sound radical, but the failure of the ICC to enforce the present law has had a radical impact on our industry.

4. TARIFF PUBLICATION

The publication and filing of tariffs with the ICC, not only provides a systematized process and some order to our pricing, it keeps the cost of determining rates when tied to collective rate and classification making, to a reasonable level for both shippers and carriers. In the absence of tariffs, no interested party, whether carrier, shipper, etc. could readily without *much* time and cost, obtain knowledge of competitive rates. Both shippers and carriers would be operating in a vacuum.

We encourage this Committee to neutralize the Trucking Deregulation Act of 1985 and any other similar bill seeking to further deregulate this industry. We relate the current situation to Charles Dickens' Christmas Carol. The Committee on Commerce, Science, and Transportation and the ICC being Ebenezer Scrooge and "further deregulation" as being the "Ghost of Christmas Future"—bleak and dreary. As in the Christmas Carol, only the Committee and the ICC can change the future. In this regard, not only should further deregulation bills be neutralized, but the ICC should be required to enforce the Motor Carrier Act of 1980 and possibly the present law should be strengthened insofar as entry and rate regulation as suggested in our earlier comments

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STATEMENT OF RITA BONTZ, PRESIDENT, MARYLAND INDEPENDENT TRUCKERS AND DRIVERS ASSOCIATION

Mr. Chairman, We, the members of the seven trucker organizations listed below, ask that this statement be included in the record of testimony for the Committee's hearing of further deregulation of the trucking industry.

The organizations are as follows: Central Pennsylvania Trucking Association, Maryland Independent Truckers and Drivers Association, Concerned Truckers of Ohio, Somerset County Truckers Association, South Dakota Independent Truckers Association, Fort Bedford CB Club and Owner-Operators of America. These organizations work together to improve safety on the highways and the economic conditions in the trucking industry, particularly as they apply to owner-drivers.

We oppose further deregulation of the trucking industry at this time and suggest that the Congress continue to monitor the effects of the implementation of the Motor Carrier Act of 1980.

The trucking industry is far too important to the citizens of this Nation for it to be left unguarded and unprotected. While we do not recommend a returning to a heavily regulated process, we do ask that some economic regulation be retained in order to insure that good business practices are followed.

Since the implementation of the Motor Carrier Act of 1980, we truck owner-drivers have, in many instances, become the victims of motor carriers. For one thing, carriers have cut the rates so low in order to meet competition that we are often forced to haul for revenue that is below our operating costs. Also because of the pressures of competition, some carriers are transferring many of their operating costs paid on to us.

Each time that an experienced trucker is forced out of his or her chosen occupation, the industry loses a valuable provider of service. The trade magazines and other trucking advertising media are full of ads for recruiting owner-operators. It's not that there is that much more freight, it is that there is such turn-over because truckers can't afford to haul for the low revenue.

Some people would say that the obvious answer is for owner-operators to take advantage of the Motor Carrier Act and get their own operating authority or to switch to single source leasing. It sounds good in theory but in practice it is not working. Shippers are usually not eager to hire a trucker who has only one or two trucks. Shippers need the assurance of having plenty of equipment available when they need it. Trucks do break down and drivers do get sick or injured.

Most owner-drivers prefer to lease to an honest, reliable motor carrier—one who will keep the trucker busy, pay a reasonable compensation, and not cheat the trucker. There are a number of advantages to leasing to a reliable motor carrier, including access to group rates on insurance, the convenience of having assignments rather than having to look for work, and so on.

But it is not always a rosy relationship. For example, it is not uncommon for a carrier, usually one of the new ones that have come into the industry in the last 5 years, to stall on payment to the trucker, sometimes to the point that the trucker gives up trying to collect his or her money. And many times, the agent or broker will skim part of the revenue from the unsuspecting trucker. In years past, the trucker could go to the Interstate Commerce Commission for help. But the ICC can't help us anymore because it does not have the staff and resources to enforce existing laws.

There is already an "anything goes attitude" in the trucking industry and further deregulation could only aggravate the situation.

We have reported to the Committee (in our testimony for the oversight hearing on the Motor Carrier Act) about the skimming and cheating that is occurring in the shipment of freight through agents and brokers. As we told you then, much freight is being hauled without proper insurance coverage.

The effect of deregulation on public safety is becoming more apparent each day. There is an increasing number of poorly trained, inexperienced drivers behind the wheels of the Nation's long haul trucks. We realize that trucking organizations, such as the member of our seven groups and the American Trucking Associations, are striving to improve professionalism in the industry, but we can't do it the job unless the compensation attracts quality drivers. As we have said many times over, safety and economics go hand in hand. Without proper compensation, we cannot have safe drivers and safe equipment.

We do not expect or want the Congress to return the trucking industry to pre-1980 days. Trucking is changing and it is entering a new era. The industry should not be shackled by burdensome and capricious regulations. But we do believe that there should be a minimum of safeguards to protect the economic stability. While it may be feasible and proper for the Department of Transportation to ensure that the industry is operated safely, we believe that a regulatory agency should approve those who enter the industry as motor cariers. To allow anyone to enter the industry without proof of ability or fiscal responsibility would be tantamount to allowing anyone who can read a law book to become a lawyer without passing the bar examination.

We ask the Committee to continue to monitor the implementation of the Motor Carrier Act and to halt any action at this time to further deregulate the trucking industry. We appreciation the Committee's sincere interest in improving the industry but we disagree that further deregulation is the answer.

Town of Oak Creek,
September 24, 1985.

Senator Bob Packwood,
Chairman, Surface Transportation Subcommittee, Senate Commerce Committee,
Washington, DC.

Dear Senator: My name is Nancy Stahoviak and I have been Mayor of the Town of Oak Creek, Colorado, since April 1984. I am employed by the Oak Creek Branch of Alpine Federal Savings. Oak Creek is located on the Western Slope of Colorado, approximately 20 miles south of the town of Steamboat Springs. The town has a population of 900. The principal activity of the economy of the town is mining, although the economy also derives some support from tourism.

As a result of the preemption provisions contained in the Bus Act of 1982, the town of Oak Creek, along with its neighboring towns of Toponas, Yampa and Phippsburg are in the process of losing their bus service. The bus line filed an application to abandon service to our town and that application was denied by the Colorado Public Utilities Commission. However, the bus company is now involking the preemption jurisdiction of the Interstate Commerce Commission, and given the past track record of the I.C.C. on these matters, we are likely to lose all bus service. Many of the residents of the Oak Creek area are older persons and they are heavily dependent upon bus transportation. Consequently, this is a tragedy for our community.

As a result of this experience, I am very concerned about the provisions, for preemption of state activity which are contained in the new trucking deregulation Act of 1985 as proposed. The preemption of state jurisdiction, combined with the abolition of the common carrier obligation under this Act, is likely to lead to our loss of freight service, as well as bus service.

Someone might argue that the preemption contained in the proposed Bill would not lead to that result. However, the preemption paragraph is extremely vague. It seems to me that the provision that no state may enforce any "standard" relating to "interstate services of any motor carrier" could well lead to exactly that result. Moreover, the proposed Act calls upon the Department of Transportation to conduct a "full investigation" of state regulatory bodies and to make further recommendations to Congress within two years. The position of the Secretary of Transportation on this issue is no secret. D.O.T. would like to see the maximum preemption. I, and the citizens of Oak Creek, are definitely opposed to this loss of control, at the state level, over the vital common carrier services which we need.

Sincerely,

Nancy Stahoviak,
Mayor.

Barber Transportation Co.,
Rapid City, SD, September 26, 1985.

Senator Larry Pressler,
407A Russell Senate Office Building,
Washington, DC.

Dear Senator Pressler: In connection with the hearing to be held tomorrow, September 27, before the Senate sub-committee on the subject of legislation intended to "take the necessary final steps to complete deregulation of the trucking industry," we are addressing you as a member of said Sub-Committee.

As you are fully aware, I am sure, our company is a regional carrier serving particularly twelve states in the Upper Midwest region of the United States, the heart of rural America. We have been in the trucking business as a Class I Common Carrier for more than 37 years and now, as a result of five years operation under the Motor Carrier Act of 1980, we are literally fighting for our lives in the motor freight service industry. As evidence, I quote from our letter to you under of April 30, 1985:

"Please be advised that on 5/13/85 Barber Transporation Co. will no longer offer scheduled service to the following cities or areas: Winner, Mission, White River, Martin, Pine Ridge, St. Francis, and Rosebud, all in South Dakota.

"Other points along and/or adjacent to Highway 18 from Highway 79 to Winner.

"Reliance, Kennebec, Presho, Vivian, Draper, Fort Thompson, Lower Brule, Midland, Mobridge, McIntosh, McLaughlin.

"Other points along and/or adjacent to Highway 12 east of Lemmon to Mobridge, South Dakota.

"Other points along Highway 20 east of Buffalo to Highway 73.

"Points south of the junction of Highway 73 and 20 on Highway 73 to the junction of 73 and 34.

"Points along Highway 34 to the junction of 34 and 79.

"Points along Highway 79 from the juction of 34 and the junction of Highway 20.

"Points along Highway 79 from the junction of 34 and the junction of Highway 20.

"We regret having to interrupt scheduled service to these communities after so many years of service by our company. The depressed economy and increased competition brought about by interstate deregulation, along with increased operating costs, have made this change necessary.

"Our loss on operations in 1984 coupled with losses thus far in 1985 have placed us in the position of having to reduce our service areas so that we can continue to provide quality service to the remainder of the region."

In spite of further economies since the date of that letter, we continue to experience losses on our reduced operations, thus threatening total loss of service by our company to our area by the combination of factors named above, and bringing us to the verge of bankruptcy as has a already happend to many other companies of our type and size.

The purpose of this letter is to emphasize the deteriorating effect of deregulation on our industry, and to plead our case for NO FURTHER DEREGULATION at this time on behalf of our company and in the interest of rural America. In other words, we strongly support the position of the American Trucking Associations which will be presented at the hearing, that "the actions proposed . . . are not timely and would unduly weaken the trucking industry . . . For reasons of highway safety as well as industry economics, further deregulation is unwarranted."

I cannot overstate the seriousness of our Company's situation.

Sincerely,

Zella S. Barber,
President.

Putnam, Hayes & Bartlett, Inc.,
Cambridge, MA.

Senator Bob Packwood,
U.S. Senate,
Washington, DC.

Dear Senator Packwood: In light of the recent hearings on trucking deregulation, it occurred to me that your subcommittee would like copies of my recent paper on collective ratemaking.

The thesis of the paper is simple. Despite the presence of collective ratemaking, price competition in the motor carrier industry is vigorous. No one denies this obvious fact. The Motor Carrier Ratemaking Study Commission took the position that since collective ratemaking no longer served the purpose of supressing competition, it could be eliminated as a relic of a bygone era.

My paper takes the alternative position. If collusion to set prices above competitive levels is not a realistic prospect, then collective ratemaking will exist only because of efficiency gains. While I believe these gains are significant, one does not have to agree in order to give rate bureaus the opportunity to offer multilateral price and service options in competition with bilateral agreements between carriers and shippers. If the efficiency gains are de minimis as critics allege, then rate bureaus will fall of their own weight since they cost carriers money.

In short, let the market decide. In any event, antitrust litigation has its own "administrative and transactions" costs, which have to be assessed against the benefits of "more competitive pricing," should that result of abolishing the antitrust immunity be established. If you have any doubt as to which is the true deregulation side of this issue, consult any lawyer on K Street. (S)he will tell you that they hope to replace ICC work with antitrust litigation. But to what public benefit, one has to ask.

Sincerely,

William B. Tye,
Director.

Enclosures.[1]

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[1] Enclosures were retained in the Committee files.

Parker Motor Freight, Inc.,
Petoskey, MI, October 3, 1985.

Members of the Surface Transportation Subcommittee,
Committee on Commerce, Science, and Transportation,
Washington, DC.

I wish to submit the following statement for the record of the hearing of the Trucking Deregulation Act of 1985.

My name is John H. Parker. I am president of Parker Motor Freight, Inc. of Petoskey, Michigan. We are a motor common carrier of general commodities operating interstate and intrastate throughout most of the Lower Peninsula of Michigan and a small portion of the Upper Peninsula. We are a family owned company, having been in the trucking business for some 58 years. We employ approximately 180 people with a fleet of 120 power units and 250 semi-trailers. Although we do not go outside of the State of Michigan, slightly less than one half of our business is interstate traffic through connections with other trucklines.

Our company is gravely concerned with the prospect of further deregulation at this time. We were fortunate to survive a disastrous financial crisis in 1982. We are still faced with an ever increasing number of carriers in our service area, competing for a finite amount of freight traffic. We are faced with an insurance crisis in our industry and increased taxes and operating expenses. Should we be forced out of business, we face an E.R.I.S.A. withdrawal liability of approximately one half of our company net worth. Now is not the time for further deregulation of our industry, at least until it has had a chance to stabilize. We feel like the victim of the old saying, "When you have them down, kick them."

The total elimination of entry controls will add more competition to an already overcapacity trucking industry. Total elimination of rate regulation and tariff filing requirements can only breed more cut throat and discriminatory rates in this current environment. Safety and fitness are bound to suffer in this over competitive situation.

The elimination of collective ratemaking will certainly cause confusion and uncertainty in our industry. The small, unsophisticated shipper and receiver of freight will suffer the most. It will also be particularly harmful to a small carrier such as ourself, who rely on through routes and joint rates with connecting carriers for our interstate traffic. Competitive rates abound in our industry today. There is no need to eliminate collective ratemaking for those who need or rely on it.

The hint of some future interference with the economic regulation of intrastate commerce by the states is particularly appalling. After many, many months of study and input, a new motor carrier act was enacted in Michigan in December of 1982. A strong emphasis was placed on increased competition but there was equally strong commitment that entry and rate regulation should continue. Certainly the federal government should not interfer with this carefully studied course of action by an individual state.

I thank you for the opportunity to present my view and opinions.

Respectively submitted,

John H. Parker,
President.

The Potato Chip Snack Food Association,
Alexandria, VA, October 11, 1985.

Hon. Bob Packwood,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Dear Senator Packwood: I am writing on behalf of the Potato Chip/Snack Food Association ("PC/SFA" or "Association"), PC/SFA is an international trade association representing producers of potato chips and snack food. At present, the Association has 690 U.S. and international members. Domestic members range in size from large national manufacturers to small regional producers. All Association mbmers share a common interest in the need for efficient transportation services. While some members of the Association use the services of regulated carriers, we estimate that Association members operate, as private carriers, approximately 1,600 over-the-road power units and approximately 24,000 smaller trucks. The Association submits this letter for the record in the Subcommittee's Motor Carrier Deregulatory Hearings held September 20 and 27, 1985.

In previous correspondence, PC/SFA has stated that its members wholeheartedly support the concept of further economic deregulation of the motor carrier industry.

While the truck transportation industry was not completely deregulated by the Motor Carrier Act of 1980, the liberalization of entry and expansion of competition made possible by the Act has resulted in a wider range of rate and service options for shippers. We feel that this increase in competition has been beneficial to all parties.

PC/SFA feels that the current lack of uniformity among the states in many areas of truck transportation regulation consititutes a substantial impediment to the free flow of interstate commerce. The lack of uniformity among the states exists not only in the area of state economic regulation, but also in leasing rules, licensing, permitting, safety regulations, truck and fuel tax rates, tax collection methods, tax reporting mechanisms, third structure taxes, and bonding requirements. Taken as a whole, these individual state regulations impose a substantial burden on business. The burden is especially heavy in the case of small businesses, which are generally unable to amortize the compliance costs over a large fleet of vehicles.

Several groups have attempted to deal with this lack of uniformity in various regulatory areas. While they have achieved limited success, it does not appear that uniformity will be achieved in the near future. Therefore, the Association feels that stronger actions are required.

Currently, there are two proposals before the Congress which would lead to further economic deregulation of the trucking industry, the National Motor Carrier Productivity and Safety Improvement Act of 1985 (H.R. 3222), and the recently submitted proposal of the Reagan Administration. Both proposals would end the current rate and entry regulatory functions of the Interstate Commerce Commission. H.R. 3222 would also establish a new concept of a "national carrier." Such carriers would be exempt from individual state regulation if they serve three or more contiguous states. While this concept would be a step in the right direction, it does not fully address the problem.

While further deregulation at the federal level will achieve additional incremental gains in efficiency, the Association feels that deregulation will not be fully effective until the problem of conflicting state regulations is effectively dealt with. Therefore, we feel that any deregulatory proposal adopted by the Committee must contain broad provisions, to ensure uniform state regulations in these areas. Without such provisions, we fear that any gains which might be achieved by further deregulation at the Federal level will be diminished by the growing problems of regulation at the state level.

PC/SFA and its members would welcome the opportunity to discuss in greater detail our individual concerns with you or with your staff.

Sincerely,

JOHN R. CADY,
President.

REGULAR COMMON CARRIER CONFERENCE,
Alexandria, VA, October 14, 1985.

Hon. BOB PACKWOOD,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: Recently, we were able to submit to the Surface Transportation Subcommittee testimony in opposition to the Administration bill to further deregulate the trucking industry.

As a result of that testimony, we have received more than 1,000 endorsements from motor carriers located across the country who, in turn, represent about 250,000 employees. The position of these constituents is in opposition to further deregulation, and they urge the Congress to consider the following specific recommendations:

A. That Congress should not enact any legislation that would eliminate economic regulation of general freight motor transportation.

B. That collective ratemaking is crucial to the economic and efficient transportation of general commodities and should be continued without further restriction.

C. That the Interstate Commerce Commission is not implementing the provisions of the Motor Carrier Act in accordance with the Congressional intent and purpose and should be required to do so.

We respectfully ask that this and the attached [1] list of endorsing motor carriers be made an official part of the record of the Administration Deregulation bill, S. 1711.

Very truly yours,

JAMES C. HARKINS,
Executive Director.

GULF STATES PAPER CORP.,
Tuscaloosa, AL, October 8, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SIR: Gulf States Paper Corporation is very much interested in Senate Bill S-1711 (Trucking Deregulation Act of 1985), which has been considered by the Subcommittee on Surface Transportation.

We are particularly concerned with sections 42, 50 and 65 regarding insurance requirements, common carrier obligations and liability standards. We oppose the enactment of these sections and we seek your support in getting this bill amended to eliminate these sections as they would put shippers and consumers in economic jeopardy.

Insurance requirements should continue to be regulated because the current law protects shippers by requiring the ICC to determine that a common carrier has required insurance levels prior to obtaining operating authority. If this provision of Title 49 (Section 42 of S-1711) is repealed then it is very likely a carrier could operate without adequate insurance or operate with no insurance at all.

Common carrier obligations should also continue to be regulated, because under present law the motor common carrier is required to provide transportation service to all segments of the shipping public within the scope of its operating authority, equally, without discrimination. The repeal of the common carrier obligation (Section 50) would remove a fundamental protection of Gulf States Paper with respect to adequacy of service.

The Carmack standard of full carrier liability and the mechanism therein for filing claims and having them resolved should be retained. Also, the requirement that a bill of lading receipt and its attendant contract terms and conditions required by Carmack should not be repealed.

Under the present provisions of Title 49 a common motor carrier is liable for actual loss or damage while goods are in its possession and the burden of proof is upon the carrier to overcome his responsibility for loss or damage. If the Carmack standard were repealed (Section 65) then common law alone would prevail and the carrier would probably only be liable for loss or damage caused by its negligence and the burden would shift to the shipper or consumer to prove this negligence. Proving carrier negligence is an exteremely difficult thing to do. Therefore, shippers would, in most cases, merely absorb losses rather than go the expensive and usually unsuccessful route of proving carrier negligence.

As shown, sections 42, 50 and 65 of S-1711 would prove a distinct detriment to Gulf States Paper Corporation and your consideration and support in not having these sections enacted will be greatly appreciated.

Sincerely,

O.H. STALLWORTH,
Traffic Manager.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, October 23, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Senate Commerce, Science, and Transportation Committee, U.S. Senate, Washington, DC.

DEAR SENATOR DANFORTH: The Administration, through the Department of Transportation, has recently transmitted its Trucking Deregulation Act of 1985, which is designed to remove all remaining Interstate Commerce Commission regulation of the trucking industry, with the exception of safety provisions and financial responsibility requirements.

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[1] The enclosure is in the Committee files.

Farm Bureau generally supports the truck deregulation initiatives taken by the Department of Transportation. We urge the Congress to actively work for passage of S. 1711, which we believe will further reduce the regulatory grasp on the trucking industry. At our annual meeting in January 1985, the elected voting delegates of the member State Farm Bureaus adopted the following policy:

"The Interstate Commerce Act and procedures under which the Interstate Commerce Commission operates should be reformed to further reduce the power of rate bureaus. We favor sunsetting the Interstate Commerce Commission."

Continued economic regulation of the trucking industry can only perpetuate inefficiencies, ultimately raising costs of goods to consumers. Partial deregulation under the Motor Carrier Act of 1980 has been successful, but remaining controls over entry and pricing in the trucking industry and immunity from antitrust laws should be removed to allow shippers, carriers and consumers to gain the full benefits of competition.

The major provisions of the Administration's bill would eliminate all remaining Interstate Commerce Commission regulations of the trucking industry, including rates and entry, antitrust immunity for collective ratemaking, tariff filing and publication requirements, and all Interstate Commerce Commission truck leasing rules. By ending needless red tape, a truck deregulation law could improve productivity in this important industry. It would also promote fuel conservation and through lower cost truck transportation generally contribute to economic growth which is vital to the economic well-being of U.S. farmers.

The Motor Carrier Act of 1980, which reformed traditional Interstate Commerce Commission regulation of the trucking industry, was supported by a broad coalition of farm groups, corporations associations and consumer organizations. We believe the Congress should make truck deregulation one of its priority goals in the 99th Congress. Farm Bureau is prepared to assist in that effort.

Sincerely,

JOHN C. DATT,
Executive Director,
Washington Office.

A-P-A TRANSPORT CORP.,
North Bergen, NJ, October 24, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR CHAIRMAN PACKWOOD: I appreciated the opportunity to appear before your Subcommittee at the September 27th hearings on motor carrier deregulation. During my presentation, I exhibited to the Subcommittee a large flow chart which demonstrates the over 300 separate functions which our company performs in connection with the provision of general freight, less-than-truckload motor common carriage. I have enclosed with this letter a reduced copy of this same chart. I request that this chart be inserted into the hearing record.[1]

The chart illustrates the complexity of a general freight motor common carriage operation. Such an operation must be geared for the efficient transportation of virtually any type of general freight tendered in any quantity for movement between any of a vast number of possible origins and destinations. The chart effectively dispels the myth that general freight trucking is an easy business to enter. The costs of this business are considerable, and they are rising as carriers are forced to expend more resources in a battle to capture a dwindling amount of traffic. In addition, with the attenuation of traffic density, industry costs are rising very steeply and disproportionately; and service, especially to small shippers, is eroding constantly. While the Motor Carrier Act of 1980 may have spawned a substantial amount of new entry into the "cream-skimming" sectors of trucking, e.g., the sectors which specialize in transporting only large volume or truckload freight, there has been no meaningful new entry into the substantially more costly and complex less-than-truckload sector of the general freight industry. Total deregulation of entry is unlikely to lead to any signficant new entry into this vital segment of the trucking industry.

The implications of the high entry barriers which characterize the general freight trucking business are substantial. The financial health of those remaining carriers responsible to the public for transporting general freight will be further jeopardized by the reduced tonnage and increased costs which would result from total deregulation. Further, the experience to date demonstrates that it is no more than wishful thinking to presume that new entrants will suddenly appear on the scene to provide the adequate and competitive service small communities will lose as a result of total deregulation.

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[1] The charts were not reproducible and are in the Committee files.

I again urge that no further deregulation be undertaken and I thank the Subcommittee for the opportunity to submit my views.

Respectfully,

ARTHUR E. IMPERATORE,
Chairman of the Board.

NATIONAL ASSOCIATION OF FREIGHT TRANSPORTATION CONSULTANTS,
Brookeville, MD, October 24, 1985.

Senator BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation, U.S. Senate, SH-428 Hart Senate Office Bldg., Washington, DC.

DEAR SENATOR PACKWOOD: This letter and attachment offers the comments of the National Association of Freight Transportation Consultants (NAFTC) on the matter of further deregulation of the nation's motor carriers and freight forwarders as has been proposed by the Department of Transportation (DOT), and, as proposed in House of Representatives bill H.R. 3222.

NAFTC's membership consists of individuals and firms from across the country who provide professional transportation and distribution consulting services to the nation's shippers, receivers and carriers. Our members' clients run the gamut from the very small manufacturer (shipper/receiver) and carrier to Fortune 500 companies and giant corporations. As such we are in a unique position to report and comment on the issue of further transportation deregulation.

NAFTC is not overly concerned about the impact of further deregulation on the nation's large shippers (including large volume shippers of small shipments), and, large carriers. It is our belief that these shippers and carriers do well under any form of transportation regulation or deregulation, and, that their interests have been adequately represented by NASSTRAC, NITL and other groups and individuals that have testified before Congress on this issue.

Our concern lies with the *truly* small shipper and small carrier and how they will manage under a totally deregulated system.

These are the types of small businesses on which our country's economy thrives and grows. These and other small businesses employ roughly half of the nation's workforce and provide most of us with our first jobs and start in the workplace. They are the sources of innovation, new ideas, and ultimately the IBMs, General Motors, Beatrice Foods, Yellow Freight & Consolidated Freightways of the future.

NAFTC is concerned that small shippers will be seriously damaged by complete deregulation of motor carriers, a freight transportation service upon which they rely almost totally. As presently structured, this legislation will place them at a competitive disadvantage to their larger "brothers" in this one very important aspect of their business—getting components and materials to manufacturer their products & getting their finished products to market.

Small carriers will face similar competitive problems in trying to locate and survive in the less desirable service areas being left to them. They will be confronted with predatory pricing and be forced to sub-haul for larger carriers at whatever price the larger carrier is willing to pay.

Both small shippers/receivers and carriers will be stripped of all affordable protections against unreasonable and unfair business practices in the transportation area. Unaffordable justice is justice denied.

NAFTC is not opposed to deregulation of motor carriers if it is in the best interest of all affected parties—big and small. It is our view however, that deregulation cannot be one-sided. It cannot throw small businesses to the wind in the name of a free, competitive marketplace.

Big is not always bad. It also is not always good. There must be a place for the small business to exist, be nurtured, and compete, else our economy and workforce will find its growth and creativity stifled.

NAFTC submits these comments in the hopes that our Congressional leaders will be made aware of some very real problems resident in the legislation now under review, and, that realizing this, constructive steps will be taken to address them.

Respectfully submitted,

FOLGER ATHEARN, Jr.,
President.

Attachment.

REPORT OF THE POLICY AND POSITION PAPERS COMMITTEE, NATIONAL ASSOCIATION OF FREIGHT TRANSPORTATION CONSULTANTS, ON PROPOSED LEGISLATION TO DEREGULATE THE MOTOR CARRIER INDUSTRY

The Motor Carrier Act of 1980 accomplished some good things—freer entry by new carriers and the freedom for carriers to make rate changes more quickly than in the past.

However, the total deregulation of motor carriers as proposed by the Department of Transportation (DOT) and others, and supported by the Interstate Commerce Commission, would be a disaster to small and medium sized shippers & receivers and smaller truck lines. The only beneficiaries of complete motor carrier deregulation will be large manufacturing companies and large truck lines.

Several shipper organizations have testified in favor of complete motor carrier deregulation. Those organizations represent many of the largest shippers and receivers of freight. No one has spoken on behalf of the tens of thousands of small shippers and receivers who will be adversely affected by complete deregulation.

It is important to understand the term "small shipper" as used in the context of this report. We refer to true small shippers, not large volume shippers of small shipments such as are represented by National Small Shipment Traffic Council (NASSTRAC) and National Industrial Transportation League (NITL). These shippers can get almost anything they want from a motor carrier because of their size.

Members of the National Association of Freight Transportation Consultants (NAFTC), by virtue of their profession, are in a unique position to view the total impact of deregulation instead of just a portion of it. This places NAFTC at an advantage over organizations representing just one type of shipper, or, individual shippers and carriers who can only report on the impact of deregulation to their own individual transportation programs.

NAFTC members see examples every day of how large shippers are being favored over small shippers. Before deregulation began in 1980, anyone could ship freight between any two points in the same region of this country and would be charged the same as anyone else shipping the same amount of a like product. Not anymore. So-called discounts have made all the difference. Large shippers are given large discounts or receive rebates or refunds monthly or quarterly. Small shippers get no discounts or very small ones.

Patronage refunds, given by large carriers to giant shippers, particularly when in combination with discount rates, are creating situations where smaller & medium-sized shippers pay as much as double or more for identical transportation services. This raises the issue of below-cost transportation service normally considered a predatory business practice.

The resulting disparity in actual shipping costs raises the issue of smaller shippers, who are paying full or next to full costs (rates), subsidizing larger shippers. Some of our members report cross-subsidization is occurring now and the trend is growing. Small carriers have no hope of competing with larger carriers under these circumstances. They simply cannot match the rebates/refunds larger carriers offer.

Total deregulation will rob small shippers and carriers of any reasonable, affordable recourse to unreasonable business practices. For example, a small shipper in Connecticut (a few months ago) gave two shipments on two days to a motor carrier to deliver to California. Each shipment weighed about 2000 pounds. After the carrier picked up both shipments and took them to its terminal, it decided it would not transport the freight to California at its published rates. It wanted substantially more.

Under current ICC regulation this shipper can demand and obtain a refund of the freight charges exceeding the carrier's published rates. Carriers given operating rights by the ICC assume the legal obligations of common carriage in exchange for those rights. They must file binding tariffs and charge only the rate specified in those tariffs.

If there is no regulation what would this shipper do? Where would it go for help? The Courts? This shipper is a small manufacturer trying to survive under competitive conditions. It was penalized by its customer for a late delivery that was caused by this motor carrier. Under total deregulation recourse left to this shipper and many others like it, the courts, is unrealistic, unaffordable, and virtually unattainable.

Motor carriers and railroads were originally regulated to prevent preference, prejudice and discrimination. We can see these evils returning if motor carriers are completely deregulated. The Robinson-Patman Act is of no help since it does not apply to services.

The Department of Transportation makes much of the fact that since 1980 over 10,000 new motor carriers have been given authority to haul freight in interstate commerce. With few exceptions, these have been truckload carriers and the exceptions are abandoning the less-than-truck-load business. Try phoning any of those 10,000 carriers and asking if they will haul 500 pounds between two small towns somewhere. Sorry. They only haul truckloads between major points.

It is our members' experience that a vast majority of smaller companies using motor carriers to ship or receive goods are not knowledgeable about how motor carriage works in this country. If asked about complete deregulation they would probably say it would be a good idea. How wrong they would be. They would suffer greatly under total deregulation.

Many of them do not understand interlining—some think the carrier to whom they tender the freight actually hauls it all the way across the country. No motor common carrier will take 500 pounds from any point in the United States and deliver it to any other point. The freight is usually interlined.

The regulatory structure in place assures the shipment will be in the hands of certified carriers throughout the haul, and, that each carrier is responsible for assessing reasonable rates and for safe handling of the shipment. Antitrust immunity is what allows a motor carrier to cooperate with other motor carriers with whom, under other conditions, it would compete.

Predatory pricing has exacted a heavy toll on smaller regional carriers, many of whom probably would be out of business today except for ERISA provisions which prevent them from doing so.

These and other practices reported by our members foreshadow what would come with total deregulation. They are equally destructive to small shippers and to small carriers. Both are placed in a destructive competitive relationship with their larger shipper and carrier competitors.

NAFTC is also gravely concerned with an anti-competitive trend that is developing in the less-than-truckload service area. Recent ATA testimony before the Senate Committee points out that four (4) nationwide carriers control 35% of the LTL freight market.

It has been the observation of NAFTC members that ATA's statistics are more right than wrong. Our members have been aware of a disturbing concentration of LTL freight among a few carriers for some time. We believe this ultimately will destroy the competitive marketplace Congress intended for less than truckload freight to the disadvantage of small shippers and carriers.

Finally, eliminating tariffs—the carrier's price lists—will create an environment where competition will begin to disappear. Valuable marketing information will be lost when tariffs are no longer required. The availability of transportation pricing information is an essential to a competitive transportation market as is the availability of stock exchange prices and information in the investment and securities market.

We should plead with our legislators, on behalf of these small shippers and carriers—many of whom are our clients—not to worship at the altar of deregulation. *No harm and much good will come from postponing further deregulation until some of the horror stories about discounts and unreasonable discrimination (even under regulation as it is known today)* become widely known. They are there and they are coming to light slowly.

The task of informing the people who will suffer the most under total deregulation is formidable, if not impossible. We must inform their representatives and convince them to act in the best interests of all shippers and carriers, even though they have not been directly asked by them. The obligation of leaders is to lead.

This matter is too important to be left to the ICC and the DOT. They are government agencies who do not conduct business as it is known in the private sector. They are remote and removed from day-to-day shipping and receiving operations, and, because of this can only view freight transportation in an academic manner.

It is much like the experts who have no children instructing parents on how to raise theirs. While they may have some good ideas they do not really know or understand their impact because they haven't experienced the real thing.

Finally, it should be noted that NAFTC, as an association, is a member of NITL. Some NAFTC members also hold individual memberships in NITL and other such organizations. Congress should be advised that the positions expressed by NITL and some of these other organizations cannot be viewed as the unanimous opinion of all members of those organizations. NAFTC members holding individual memberships in those organizations have expressed opposite opinions on this issue, as has NAFTC itself.

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